

Smoking Guns In E-Discovery

How long accountants kept electronic documents — and whether they kept all the drafts — could affect the outcome of a court case, says **Hanan Isaacs**, who has an office at Princeton Professional Park.

Isaacs will participate in a seminar that aims to throw some light on litigation support and forensic accounting. The New Jersey Society of CPAs stages the conference on Thursday, October 25, at 8:30 a.m. at the Sheraton Woodbridge Place, Iselin (www.njscpa.org/catalog/litigation.cfm). Cost: \$339. Call 973-226-4494.

After the keynote speech by **Robert L. Dunn**, who has written several books on how to prove damages in an economic loss case, Isaacs will join a roundtable discussion on direct and cross examination of financial experts.

Also on the panel are **Vincent E. Gentile** of Drinker Biddle & Reath, **Ian D. Meklinksy** of Fox Rothschild, the Honorable **Joel Rosen**, retired U.S. Federal Magistrate, and Honorable **M. Allan Vogelson**, now of counsel to Parker McCay. One of the afternoon sessions focuses on “Smoking Guns in Electronic Discovery from Experts: E-Mail, Draft Reports and Other Sources of Evidence.”

‘Society translates harms and wrongs into dollars and cents,’ says Isaacs. ‘Often, that is the only measure of justice that clients receive for their pain and suffering, and to compensate them for wrongdoing by others.’

“Damages represent the hidden side of many cases, and it shouldn’t be that way,” says Isaacs. “At the end of the day, society translates harms and wrongs into dollars and cents. Often, that is the only measure of justice that clients receive for

their pain and suffering, and to compensate them for wrongdoing by others. The professional community has to be proficient about asking for damages, defending against them, and carefully

measuring them,” he said.

Isaacs warns that the federal and state rules on expert reports are quite different. “The state says the experts’ reports are workproducts,” says Isaacs. In most circumstances, the state court can ask only for the final report, not the notes, and not the drafts.

“But the federal rules say discovery is fairly broad and unlimited. Not only must the expert show the report, but the court can ask for the draft and iterations, and whether a lawyer asked for a change in the report. If you are used to state court and you get into federal court and don’t know those rules you will get hammered.”

Isaacs also warns the expert witnesses to carefully prove their



Hanan M. Isaacs, ‘Damages Roundtable’ Moderator, has been selected for the third year in a row for inclusion in *The Best Lawyers in America in the field of Alternative Dispute Resolution*.

opinion. “Don’t just say your opinion is based on your experience, but provide the details of your investigation, so the factfinder can follow how you got from A to Z. Show the math.”

Where an expert provides an opinion, but the judge or arbitrator thinks he didn’t have the factual basis to issue the opinion, the report gets thrown out. It will be too late to get another one. “Without an expert,” says Isaacs, “your side is done for.”