

NAPSA 31st Annual National Adult Protective Services Association Conference And
2nd National “Bridges to Justice” Conference
November 16th – 19th, 2020

USING CIVIL REMEDIES TO RESPOND TO ELDER FINANCIAL ABUSE

FRANK J. FOX, MAJORS & FOX

VICTIMS

JUSTICE

CIVIL REMEDIES



FINANCIAL ABUSE EPIDEMIC



2009 Metlife Market Study – \$2.6B



2015 Truelink Study – \$36B

FINANCIAL ABUSE EPIDEMIC

Estimates Do Not Include Largest Losses



Emotional Distress



Physical And Mental Health impacts



Erosion Of Ability To Trust

APS INVESTIGATION

Response Alternatives



Criminal Prosecution

- ▶ Focuses on Primary Wrongdoer
- ▶ Rarely Prosecutes Person/Entity Assisting



Civil Litigation

- ▶ Can Include Person/Entity Assisting

CRIMINAL PROSECUTION

Potential Outcomes



Cessation



Deterrence



Restitution Order

CRIMINAL PROSECUTION

Restitution Realities



Only Restores Economic Loss



Orders Rarely Satisfied



Even Partial Satisfaction Can Be Slow

CIVIL LITIGATION

Civil Remedies: What Are They?



Compensatory Damages

- ▶ Recovery of Economic Losses
- ▶ Recovery for Emotional Distress
- ▶ Recovery for Other Impacts

CIVIL LITIGATION

Other Civil Remedies

\$ Punitive Damages

\$ Treble Damages (Some States)

\$ Double Damages (Some States)

\$ Attorney's Fees And Costs

CIVIL LITIGATION

Civil Remedies Reality



**Not Every Case Can
Provide Recovery Because
Sometimes Defendant Is:**

- ▶ Unavailable and/or
- ▶ Judgment Proof

CIVIL LITIGATION

Let A Lawyer Determine Viability



Facts And Evidence



The Elder



The Defendant(s)



The Law

CIVIL LITIGATION

Potential Outcomes



Financial Compensation Through Settlement



Financial Compensation Trough Trial



Defense Verdict

A CIVIL REMEDIES REALITY:

Most Cases Settle

▶ Unsuitable Insurance Transactions

- ▶ Fred M. \$1.65M
- ▶ Sharon F. \$2.35M
- ▶ Lucille G. \$502K

▶ Radio Show Host Annuity Swindle

- ▶ Carol K. \$400K

▶ Veteran's Aid And Attendance/Annuity Scam

- ▶ Thomas G. \$1.15M
- ▶ Joan B. \$175K

▶ Placement Service/RCFE Conspiracy

- ▶ Dorothy & Peter G. \$1.0M

▶ Sweepstakes Scam

- ▶ Rosemarie S. \$692K

▶ Forced Place Insurance (\$1,130 Loss)

- ▶ Ken & Jerry S. \$181K

▶ Crooked Financial Advisor Scams

- ▶ Dorothy A. \$3.6M
- ▶ Teresita & Ferdinand D. \$1.85M
- ▶ Colleen H. \$3.2M
- ▶ Mary H. \$3.6M
- ▶ Norma H. \$1.4M
- ▶ Dorothy P. \$1.5M
- ▶ Phyllis N. \$1.5M
- ▶ Legaya R. \$1.5M
- ▶ Inge L. \$13M
- ▶ Betty Jean M. \$1.175M
- ▶ Robert H. \$4M
- ▶ Tony & Janet \$3M

CIVIL LITIGATION

Why Some Settlements Are So Substantial



Emotional Distress Damages



Exposure To Punitive Damages



Exposure To Attorney's Fees (Some States)

ANOTHER CIVIL LITIGATION REALITY

Not Every Case Settles



Barney Williams's Trial

Williams v. Pantaleoni et al.

- ▶ \$18,309.41 Economic Loss
- ▶ \$3.1M Jury Verdict
- ▶ \$4.3M Judgment*



VICTIMS

ATTORNEYS

APS REFERRAL



ACCESS TO JUSTICE

The Practical Problem



"Needle In A Haystack"

- ▶ Dorothy and Peter Gille
- ▶ Barney Thomas Williams

ACCESS TO JUSTICE

The Practical Problem



**The Internet: World's Biggest
"Haystack" Of Unqualified Lawyers**



**Yellow Pages: Obsolete And
Too Limited**

ACCESS TO JUSTICE

The Practical Problem



Too Many Lawyers



Too Few Qualified Lawyers



**Too Many Unqualified Lawyers
Willing To Charge \$\$\$**

IMPROVING ACCESS TO JUSTICE

Expanding The "California Model"



**Elder Abuse And Dependent
Adult Civil Protection Act**



**CLE Training On How To Handle
Elder Financial Abuse Cases**



Non-Profit Lawyer Referral Services

THE CALIFORNIA MODEL

Elder Abuse And Dependent Adult Civil Protection Act



Defines “Financial Abuse” Broadly

- ▶ “takes, secretes, appropriates, obtains or retains . . .”
- ▶ Covers **any** Deprivation of a “property right”
- ▶ Conclusive Presumption of Financial Abuse

THE CALIFORNIA MODEL

Elder Abuse And Dependent Adult Civil Protection Act



Provides Enhanced Civil Remedies

- ▶ Compensatory Damages
- ▶ Punitive and Treble Damages
- ▶ Attachment and Protective Orders

THE CALIFORNIA MODEL

Elder Abuse And Dependent Adult Civil Protection Act



**Joint Liability For Assistors Of
Financial Abuse**



Unilateral Right To Attorney's Fees

THE CALIFORNIA MODEL

CLE Training



**There Are Already CLE Courses Available
On Handling Elder Financial Abuse Cases**



**Next Year CANHR Will Offer An Entire
Online Course From Case Intake to Trial**

THE CALIFORNIA MODEL

Additional Training/Support Resources



**Financial Abuse Listserves Share
Information And Support**



Mentorship Programs

THE CALIFORNIA MODEL

Non-Profit Lawyer Referral Services



Screen Lawyers To Confirm Qualifications



Case Review Requirements



Track Case To Receive % Of Fees

AN ACCESS TO JUSTICE PROJECT

Expanding The California Model



**Getting Other States To Enact
Mini-Elder Abuse And Dependent
Adult Civil Protection Acts**

AN ACCESS TO JUSTICE PROJECT

Expanding The California Model



Enlist Bar Associations To

- ▶ Recruit New Attorneys
- ▶ Train Attorneys to Handle Elder Financial Abuse Matters
- ▶ Offer Lawyer Referral Services for Elder Financial Abuse Matters

AN ACCESS TO JUSTICE PROJECT



Enlist Adult Protective Services To

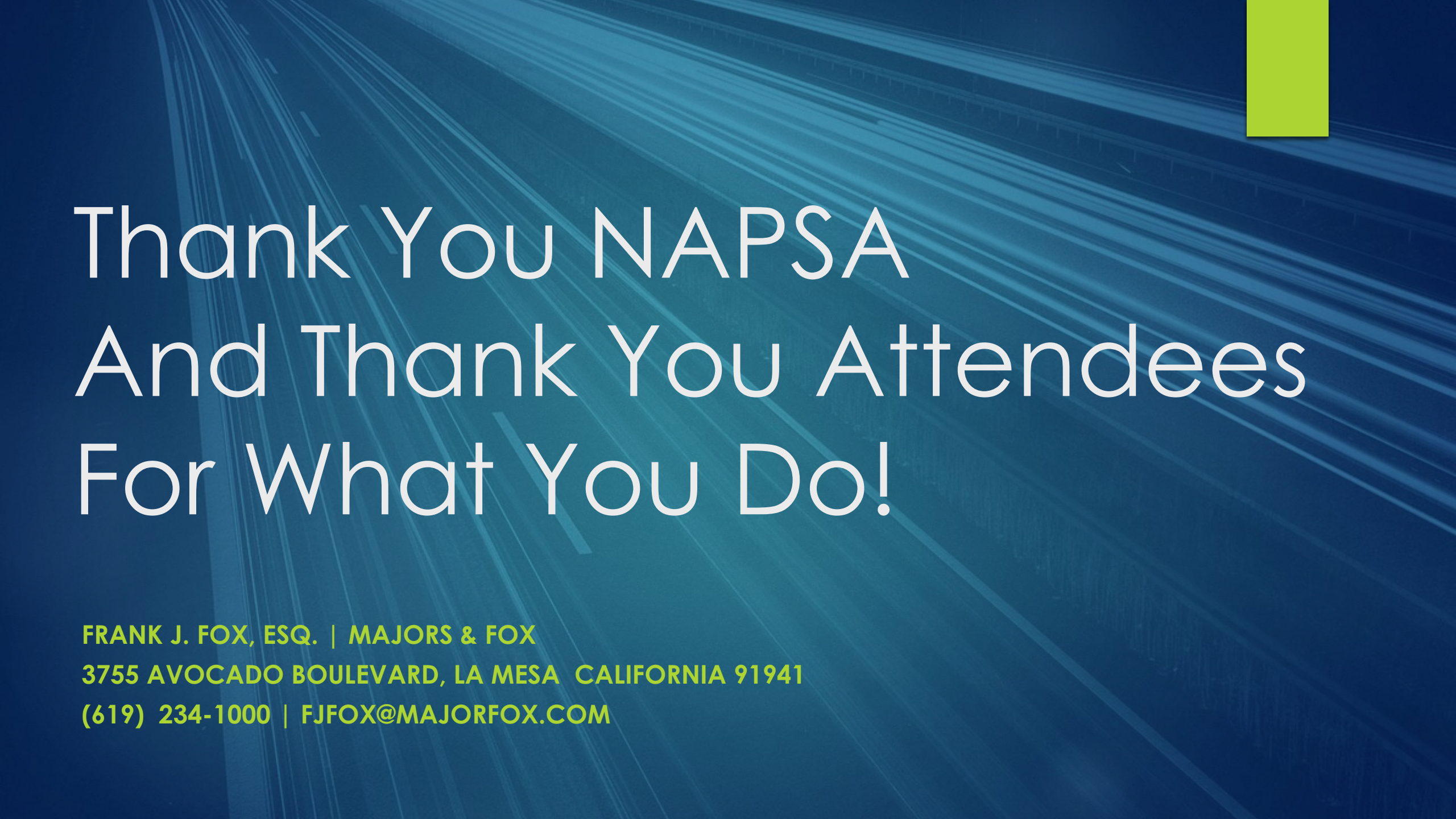
- ▶ Provide Elder Financial Abuse Victims With Contact Information for Non-Profit Lawyer Referral Services Which Maintain Panels of Qualified Lawyers



FINANCIAL
ABUSE
VICTIMS

RESTORED
FINANCIAL
SECURITY

APS REFERRAL



Thank You NAPSA And Thank You Attendees For What You Do!

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