USING CIVIL REMEDIES TO RESPOND TO ELDER FINANCIAL ABUSE

FRANK J. FOX, MAJORS & FOX
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
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

1. Financial Compensation Through Settlement
2. Financial Compensation Through Trial
3. 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*
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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