

NAPSA 31st Annual National Adult Protective Services Association Conference And  
2nd National “Bridges to Justice” Conference  
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# 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 Through 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

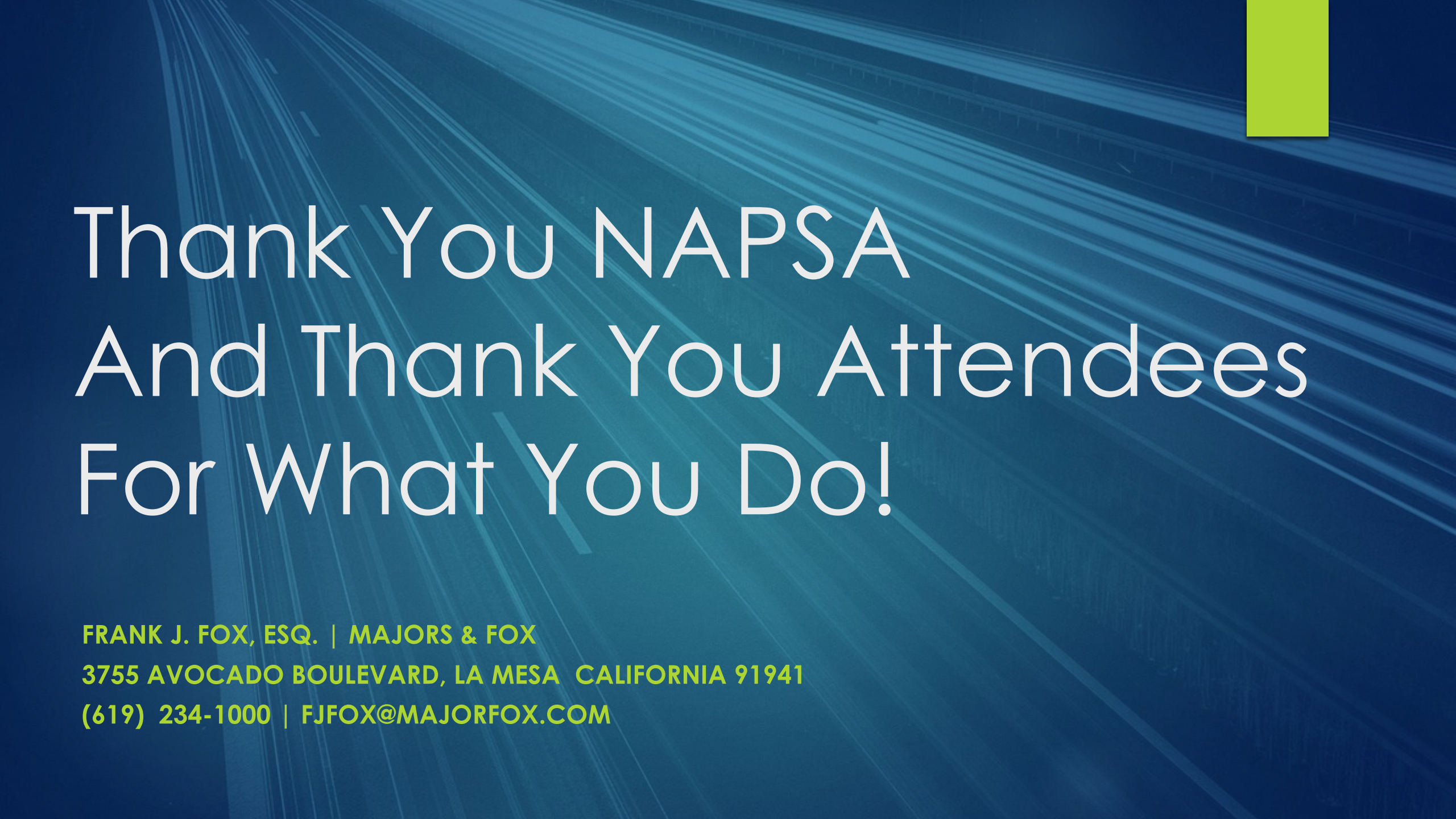




FINANCIAL  
ABUSE  
VICTIMS

RESTORED  
FINANCIAL  
SECURITY

APS REFERRAL



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

FRANK J. FOX, ESQ. | MAJORS & FOX  
3755 AVOCADO BOULEVARD, LA MESA CALIFORNIA 91941  
(619) 234-1000 | FJFOX@MAJORFOX.COM