Unconscionable: Financial Exploitation of Elderly Persons with Dementia

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UNCONSCIONABLE: FINANCIAL EXPLOITATION OF ELDERLY PERSONS WITH DEMENTIA

Matthew A. Christiansen*

INTRODUCTION

An attorney hands eighty-six year old Gladys Smith a document and asks, "Have you seen this purchase agreement before today?" Gladys answers, "No. I don't think so." Then the attorney assists Gladys in turning to page thirteen of the agreement where the signature "Gladys Smith" is written and asks whether it is her signature. Gladys debates the question in confused ambivalence, stating that it could be her signature, but it seems too neat; she finally settles with, "I don't think it would be my signature."

This purchase agreement, signed July 1, 2003, commits to selling Gladys's farm where she has lived for nearly seventy years. On this day, February 13, 2004, Gladys is being deposed and has stated that she has no recollection of this agreement and does not even remember having ever received an offer for the purchase of her farm.

Next, the deposing attorney gives Gladys an affidavit of

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1. The story of Gladys Smith herein is based on true and actual events, however names, dates, and places have been altered to protect the identity of those involved.
Gladys Smith, dated December 3, 2003. Gladys spends several minutes closely examining the document as if seeing it for the first time. She occasionally reads portions aloud, including the statement, "The past couple years, partners have discussed selling the real estate." She then addresses this affidavit statement, saying, "Well, I don't think—not that I know," as if the affidavit belonged to someone else. Finally, she investigates the bottom of the affidavit and states: "I don't think that's my signature."

Gladys suffers from dementia. Her deposition is a painfully sad demonstration of the effects of this ailment. When Gladys was asked about her siblings, she correctly responded that she had three sisters, but then she pointed across the table at one of her daughters and stated, "There's one of them." Gladys said that one of the other sisters had been living with their mother up until last year, although their mother had actually passed away ten years prior.

Even sadder is why Gladys was being deposed. Her deposition and subsequent events represent the worst-case scenario for a family having an elderly member with dementia—the family is torn apart and the elderly family member is financially exploited.

More Americans than ever before must be prepared to deal with the affects of dementia on an elderly family member largely because people are living longer. For example, in regards to Alzheimer's disease, the most common form of dementia, increasing age is the greatest risk factor. Indeed, one out of eight people over sixty-five and nearly fifty percent of those over eighty-five suffer from Alzheimer's, meaning that approximately 5.1 million Americans have the disease. In addition, it is estimated that by 2050 this number may be...

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3. Id.
4. Id.
The purpose of this article is to provide information and guidance about how elderly persons and their families can prepare for the onset of dementia in order to avoid or mitigate the potential for experiencing the same tragic fate as Gladys and her family. This article will first give historical background to the events leading to Gladys's deposition, as well as a description of disastrous subsequent events. Second, the article will examine what Gladys and her family could have done differently at various points in time to have avoided or reduced the chances for Gladys's exploitation.

**HISTORICAL BACKGROUND**

This section describes the historical evolution of the Smith family estate plan and how that plan went awry. Several events, including the formation of the partnership, the creation of Gladys's power of attorney, and the hiring of her caregiver will then be analyzed in the next section to show how they could have been made more effective.

**FARM PURCHASE AND PARTNERSHIP CREATION**

Gladys Smith purchased her approximately 410-acre farm in Wisconsin in the 1930s. The location is beautiful with a view of the Mississippi River. In 1945, she married Roy Smith, who at that time was a Marine fighting in World War II. Following the war, Gladys and Roy worked their farm, growing crops and raising cattle, hogs, and horses. They also raised four children.

By 1980, the farm's value had greatly increased. Gladys and Roy became concerned that upon their death, it would not be possible to keep the farm in the family because at least part of it would have to be sold to pay estate taxes. Thus, in 1980 the farm was placed into a limited partnership with Gladys, Roy, and their son, Karl Smith, as general partners, and their three

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5. *Id.*
daughters as limited partners.

**POST PARTNERSHIP CREATION TO ROY’S DEATH**

In 1985 Gladys was in a serious car accident leaving her paraplegic. Gladys was able to stay at home because her husband Roy could give her the assistance she needed. However, in 1996, Roy passed away.

Roy’s will placed all his property except his farm interest into a trust to care for Gladys for life with the remainder to their four children. The will appointed Tim Jones, the family’s accountant, to serve as trustee. A bank in Minnesota was named as an alternative trustee.

**ROY’S DEATH TO THE SALE OF THE FARM**

For the two years following Roy’s death, Gladys remained lucid and was able to get by with relatively moderate care. Someone would come to her home and help her out of bed in the mornings and then someone else would come at night to help her into bed. Then in the fall of 1998, she had to undergo a serious operation involving an untreated bedsore. A short time before this operation Gladys appointed Tim Jones as her agent under her durable power of attorney in case she became incapacitated.

Although the operation was successful in maintaining Gladys’s physical health, it was after this operation that her mental health began to decline. She could no longer get by with someone just helping her in and out of bed and was in need of full-time care.

Gladys’s daughter Nancy thought that Lori, a nurse with the county nursing program, was a good choice to be Gladys’s full-time caregiver. Lori had taken care of Gladys intermittently prior to the operation, so she seemed like a logical choice. Nancy handled all the contracting and other arrangements in establishing Lori as Gladys’s sole full-time caregiver. In the next few years, Lori became very involved in Gladys’s personal
Gladys’s dementia worsened dramatically in late 1999 after Gladys and Lori were in a severe car accident while driving in Gladys’s handicap van. Lori only suffered minor injuries because she was wearing her seatbelt; however, Gladys was not buckled in, and she nearly died. Not long after Gladys was released from the hospital she began to tell people that she had conversations with her husband Roy and other deceased relatives. She rarely understood who her grandchildren were and sometimes could not recognize her own children.

Gladys’s financial exploitation coincided with the progression of her dementia. Beginning in 1998 and occurring more frequently in subsequent years, some of Gladys’s children convinced her to write checks for things that she had not previously paid for, such as plane tickets, meals at nice restaurants and large gifts to grandchildren. Eventually these children began to write the checks themselves and then have their mother sign them.

Gratuitous check writing, however, pales in comparison to the financial exploitation that was to come. In fall 2002, a developer became interested in buying Gladys’s farm. His first offer of $1.9 million was rejected. A short time later, he increased his offer to $3.5 million. Under the terms of the partnership agreement, the proceeds from the sale of the farm would be divided among the partners, Gladys and her four children. Therefore, Gladys’s children stood to directly profit from the sale of her farm.

At this time some of the children anxiously wanted money and believed the partnership should accept the developer’s $3.5 million offer. These children, however, were limited partners and thus did not have authority to sell the farm. Gladys and her son, Karl, were the only general partners, and Karl rejected the $3.5 million offer. The developer realized the situation offered the possibility to get Gladys’s farm well below market value, and so he increased his third offer to five million dollars.

Karl was not sure whether a sale of the farm at that time
was in Gladys's best interest. Also, he believed a final decision to sell should not be made until the farm had been appraised and possibly marketed in order to learn its true value. Five million dollars was too much for his siblings to resist, however, and they proceeded to try to sell the farm without Karl's approval.

In conjunction with the developer's attorney, the three limited partners signed a purchase agreement to sell Gladys's farm. They were also able to obtain Gladys's signature on this purchase agreement. Accordingly, Karl, as general partner, sued to stop the sale.

As part of his case, Karl had the farm appraised. The appraisal valued the farm at $7.5 million, fifty percent more than what the other partners agreed to in the purchase agreement. However, the limited partners could not back out of the deal with the developer because they had signed a guarantee that they would be personally liable if they reneged on the purchase agreement. Karl obtained a letter of intent from another developer stating that his company would pay $7.9 million for the farm.

Karl deposed Gladys in order to learn whether she actually wanted to sell the farm. In the deposition, Karl's attorney asked Gladys "How many different offers have been made to buy the farm?" She responded, "How would I know? Nobody comes and asks me or says 'I want to sell or buy your farm ....'" The attorney next asked "So you don't know how much the last offer was to buy the farm?" Gladys answered, "Well, I sort of got told." Gladys was even asked explicitly "Did you want to sell the farm, Mrs. Smith?" She answered "Not especially." Later in the deposition she stated, "I just love it there. It's a beautiful place."

Gladys had signed an affidavit, mentioned above, swearing that the partnership had discussed selling the farm for years and that she would prefer it sold. One of the three limited partners testified at trial that Gladys had nothing to do with preparing this affidavit. The testimony indicated that the affidavit was
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never read to Gladys; it was simply placed in front of her and she was told where to sign. This explains why, when Gladys was asked in her deposition who prepared her affidavit, she responded, "I don't know...I never heard or seen it before."

Arrow County Judge Joseph Sanford held that the limited partners did not have authority to sell the farm without the approval of both general partners. He also held that Gladys was not competent to act as general partner. Since Tim Jones was given power of attorney before Gladys's 1998 operation, the judge authorized Tim to "perform [Gladys's] duties as general partner in her stead."

Judge Sanford's 2004 ruling allowed Gladys to keep her farm. His decision that Gladys was incompetent meant that someone needed to control her finances. Given that her own children had just tried to sell her farm against her wishes, it was clear it would not be one of them. The logical choice was Tim since he already had the power of attorney and was trustee of Roy's testamentary trust.

POST COURT RULING TO PRESENT

The family litigation ended, and Gladys kept most of the farm. The partnership agreed to sell part of the farm to raise revenue for Gladys's care and to provide financing for the limited partners who desired money. This light at the end of the tunnel, however, turned out to be a train, as once again Gladys was financially exploited.

In 2006 Stone Creek City Council member, accountant, financial adviser, and Gladys's trustee, Tim Jones, was charged with stealing approximately $248,000 from Gladys's accounts and trust. A bank employee became concerned when one of Gladys's accounts had an overdraft, and contacted the Arrow County Human Services Department of Aging who notified the Stone Creek Police Department.

Gladys's story is tragic. When dementia set in, people she trusted financially exploited her, perhaps because she did not
have the mental acuity to stop them. Fortunately, there are things that other individuals can do differently to avoid much, if not all, financial exploitation.

**MITIGATING THE RISK**

This article posits four keys to creating an estate plan that mitigates the opportunity for financial exploitation: (1) expecting the worst-case scenarios; (2) advance planning; (3) periodic communication; and (4) creating layers of protection to guard against the worst-case scenarios. These four keys will be described below while being applied to the Smith family estate plan to show what they could have done differently to have avoided or reduced Gladys's exploitation.

**CREATION OF THE PARTNERSHIP**

The primary action that Gladys and her family failed to take when they created the partnership was to consider the possibility that Roy or Gladys could eventually suffer from dementia and that this could have an impact on the partnership. A key factor in planning for old age is "always [to] expect the worst." This includes considering not only that a parent may eventually suffer dementia, but also that family members may exploit them. Indeed, according to the National Center on Elder Abuse, the people who commit elder abuse are most often relatives.

Making the children partners meant that if the farm were sold the children would directly profit. This opened up the possibility that the children's motives could be in conflict with their parents' desires. Initially there were enough checks and balances that this conflict could not cause a problem, as Gladys and Roy were both of sound mind, and the partnership

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agreement required that all three general partners unanimously agree prior to the sale of any part of the farm. One costly error, however, was in not discussing the parents' wishes in the worst-case scenarios, such as what to do if Roy died and Gladys developed dementia.

Of course, it is not feasible to predict all potentialities. Advance planning, however, allows people to create a plan for their elderly family members at a time when those members are able to be involved and make their wishes known.

It is important to "treat advanced planning as an evolving process." In his book, *Is Your Parent in Good Hands? Protecting Your Aging Parent from Financial Abuse and Neglect*, attorney Edward J. Carnot recommends planning for the next five years and then meeting with the family three years later to plan for the next five years and so on. This ensures that children constantly have up-to-date knowledge of their parents' desires. It also means that everyone is aware of the parents' wishes before the parents' mental or physical health begins to decline, so that if that time comes there will be a greater chance of agreement on how to proceed.

When Gladys's mental health began to decline in 1998, her family did not know how to proceed because they had never discussed what she wanted. Gladys did, however, take the precaution of appointing Tim her durable power of attorney, but there were numerous problems with this selection. For example, Tim was appointed hastily before Gladys's 1998 operation and it was not made clear what Tim would do and in what situations. Indeed, he essentially did nothing as Gladys's power of attorney until Judge Sanford's ruling in 2004.

Communication about the worst-case scenarios might have helped Gladys make a more prudent choice for her durable

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8. CARNOT, *supra* note 6, at 47.
9. *Id.* at 42.
10. *Id.* at 47.
11. *Id.*
12. *Id.*
13. *Id.* at 47-48.
power of attorney, or at least she may have been able to make Tim's power of attorney more delineated. Also, the discussions may have given Gladys and her family an opportunity to consider whether other options, such as a guardianship or trust, were preferable to a power of attorney if her mental health declined beyond a certain point. At the very least, while Gladys was mentally acute she could have appointed an agent to represent her in the partnership, and she could have given that person clear instructions of what to do in certain situations. If Gladys had taken any of these precautions, perhaps her representative would not have agreed to sell the farm prior to Gladys's death and certainly would not have agreed to sell it for fifty percent below market value.

One could argue that the limited partnership worked because Karl, as general partner, was able to bring suit to stop the sale. However, if Karl had been less knowledgeable, unscrupulous or as desirous of money as his siblings then he may have wanted a quick sale too, in which case Gladys's farm would have been sold against her wishes. Also, to win via litigation is not a true victory if litigation could have been avoided altogether with better planning. Accordingly, a preferable outcome would have avoided litigation by including layers of protection, more communication between the family members, and advance planning to protect against the actualization of one worst-case scenario: Roy's death, Gladys's dementia, and the children's attempt to sell the farm without their mother's full understanding.

Gladys and Roy also may have erred in making their son, Karl, a general partner. On paper, Karl was a perfect choice for general partner, as he had a bachelor's degree in business and

14. National Center on Elder Abuse, supra note 7. http://www.nceaea.aoa.gov/ncearoot/Main_Site/FAQ/Basics/Risk_Factors.aspx “Particularly in the case of adult children, abusers often are dependent on their victims for financial assistance, housing, and other forms of support.” Id.

15. This is especially true when one considers the high financial, emotional, and time costs of litigation. These stresses are felt even more when the litigation is between family members.
finance, he was a real estate broker, and he had headed fifteen to twenty real estate development projects, including a multi-million dollar development in a Colorado ski resort. He even had experience as a general partner in several other partnerships. Thus, the problem was not in making Karl general partner per se but in making him general partner to the exclusion of the other children.

Parents have a proclivity to not realize the risk to family harmony in appointing a child as a fiduciary in lieu of their other children.16 The children who are not chosen are left with an impression that they are not as valuable as the appointed child.17 This feeling is amplified when it festers over many years and is fueled by irregular sibling interaction because of geographical dispersion.18 Indeed, none of Gladys’s four children lived in the same state and Karl’s siblings’ discontent brewed for twenty years between the time he was made general partner and the onset of Gladys’s dementia.

Estate planning practitioner, Timothy P. O’Sullivan, poignantly describes what happens when a surviving parent dies or becomes disabled in a situation in which one child has been appointed fiduciary over the others.19 He writes:

Parents are the emotional ‘glue’ that melds the family unit. Stripped of this cohesion by the death or disability of a surviving parent, grief, ‘orphan syndrome,’ and even anger often combine to create a highly-charged emotional cauldron among the surviving children and their spouses that negatively impacts the harmonious management of a parent’s estate or trust. The feelings of family members at this time are usually at their most sensitive and thus are easily injured. The mindset of adult children in such an environment often will revert to a level that is virtually indistinguishable from adolescent sibling rivalry. Children may be indignant and feel their parents, who

17. Id. at 261.
18. Id. at 260.
19. See id. at 260-61.
named a sibling as financial fiduciary with the associated economic power and authority over family assets, have unfairly diminished their worth as a child.\textsuperscript{20}

This could not more accurately describe what happened in Gladys's family upon Roy's death\textsuperscript{21} and the onset of Gladys's dementia.

As Gladys's mental health deteriorated so too did the relationships between her children, eventually devolving into litigation. One reason the situation may have come to litigation is that the three children who were limited partners may have so resented that Karl was appointed general partner that they could not analyze the circumstances objectively.\textsuperscript{22} This would explain why the limited partners refused to listen to Karl and accepted an offer for fifty percent below market value.

It is not unusual for families to lose amicability when one child is given a financial fiduciary role in the estate plan to the exclusion of the other children.\textsuperscript{23} In hindsight, Roy and Gladys should have considered an alternative arrangement to making Karl general partner.\textsuperscript{24} This may have meant some extra costs in appointing an independent third party fiduciary or paying more in estate taxes. Presumably, however, a slight reduction in financial benefit would have been worth keeping their children on speaking terms after the estate plan was carried out.

The partnership arrangement, however, was not the sole cause of Gladys's financial exploitation. There were numerous

\textsuperscript{20} Id. at 261.

\textsuperscript{21} Id. As evidence of a parent acting as a "glue" for family cohesion, at Roy's funeral, Gladys's farmhand was heard to say something to the effect that now no one would be around to stand up for Karl. Given the subsequent familial deterioration, this comment intimates that Roy had been an important figure in preserving family unity.

\textsuperscript{22} Id.

\textsuperscript{23} Id. at 260. O'Sullivan estimates that roughly one-third of estate plans making one child a financial fiduciary have a deleterious effect on family harmony.

\textsuperscript{24} See generally id. Failure to make this consideration may not have been entirely Roy and Gladys's fault, as estate planners often do not adequately advise their clients about the risks to family harmony in appointing one child financial fiduciary to the exclusion of their other children.
factors, such as Roy’s testamentary plan, granting Tim power of attorney in 1998, the onset of dementia, choosing a caregiver, and Judge Sanford’s ruling activating Tim’s power of attorney that all contributed to her financial exploitation. This article will now apply the principles of advance planning, periodic communication, expecting the worst-case scenarios, and creating layers of protection to guard against those scenarios to these other factors in order to demonstrate that Gladys’s financial exploitation could have been greatly mitigated if not completely avoided.

ROY’S TESTAMENTARY PLAN

Roy did engage in some advance planning. For example, his will established a testamentary trust for Gladys for life with the remainder to their children. Also, naming Tim trustee and the bank in Minnesota as alternative trustee made his wishes clear. Indeed, he demonstrated good foresight in naming an alternative trustee to cover for the possibility that Tim might not have been able to serve.25

In addition, Roy was wise to not make one of the children trustee. Making the children trustees of a trust to which they are future beneficiaries would have created the temptation to spend less for Gladys’s care, as they would have inherited any money not spent.26 Thus, Roy’s will did guard against this worst-case scenario.

The will, however, failed to provide layers of protection against the worst-case scenario of Tim’s fiduciary breach. The will should not have made the family’s accountant an unbonded sole trustee of the family’s trust. The only checks on the trustee were Gladys and her children’s attention to Tim’s actions and his accounting methods. These modest checks were reduced in 1998 when Gladys’s mental health began to decline, leaving few

25. JESSE DUKEMINIER ET AL., WILLS, TRUSTS AND ESTATES 490 (7th ed. 2005). If the settlor’s trustee cannot serve, then the court will appoint a trustee; in naming an alternative, Roy made sure the trustee would be one he preferred.
motives for Tim to follow his fiduciary duties outside of his own scruples.

When Gladys’s mental health deteriorated, her children attempted to monitor Tim more closely. They requested accounting documents, but these documents were often incomplete and hard to understand. Also, Tim was usually difficult to reach and would sometimes take several months in responding to requests for information. The children were suspicious that Tim was over-charging and not managing the trust effectively.

These suspicions were confirmed in 2001 when an Internal Revenue Service notice of fines was delivered to Gladys’s home, as opposed to Tim’s office. Tim had apparently been late in filing various tax information, including Lori’s payroll taxes. In response, the IRS levied hundreds of dollars in fines. Tim had attempted to cover up this mismanagement, and he probably would have if the fines had not been sent to Gladys’s home. Thus in late 2001 the children began investigating how they could remove Tim as trustee.

Unfortunately, Roy’s will did not address removal of the trustee. If it had, it may have acted as a deterrent of fiduciary infidelity and motivated Tim to be more attentive to the beneficiaries’ concerns. One way the trust could have allowed for Tim’s removal is to have given the children, as remainder beneficiaries, the power of a “fiduciary discharger.” With this power, the children would have had the option to remove and replace Tim without cause. To prevent the children from replacing Tim with an individual trustee that they might overly control, the replacement options could be limited to corporate trustees, such as the bank named in Roy’s will. The will also could have prescribed whether a majority or unanimous

29. Id.
30. Id.
agreement was necessary to remove Tim. When only one or a few children are given fiduciary power it can cause jealousy and indignation among the excluded children. Thus, if the will had allowed for a "fiduciary discharger," all the Smith children should have been given an equal discharge vote. Since the will did not create an opportunity for removal, however, the children had to rely on the Wisconsin statutes.

Wisconsin Statute § 701.18(2) requires that a beneficiary who wishes to remove a trustee must do so upon notice and a court hearing. At this hearing, the beneficiary must demonstrate that there is cause to remove the trustee. This meant the beneficiaries would have had to invest a lot of time and expense to attempt to remove Tim with the risk that he would remain trustee and become alienated. To lose would have made an already frustrating situation even worse.

Clearly, Roy's will did not provide adequate layers of protection against fiduciary breach. Given Gladys's disabilities, a trust with a division of trustee obligations between a corporate fiduciary responsible for investment management and a two to four person Co-Trustee Committee responsible for disbursements would have been better.

"The use of a corporate fiduciary as a trustee responsible solely for financial investment and a Committee with responsibility for directing expenditures creates an internal check and balance system far more responsive than most court review processes." The Committee can be "comprised of

31. Id.
32. Id.
33. WIS. STAT. ANN. § 701.18 (WEST 2007).
34. In re Bowen Charitable Trust, 622 N.W.2d 471, 475 (Wis. Ct. App. 2000). Compare with RESTATEMENT (THIRD) OF TRUSTS §65 (2003) (explaining that if all the beneficiaries of a testamentary trust consent, they can compel the removal or replacement of a trustee so long as it does not conflict with the trust's material purpose).
35. See In re Gehl's Estate, 92 N.W.2d 372, 377 (Wis. 1958). As evidence that the children might have lost; the failure to file accounts is not a sufficient reason to remove a trustee.
37. Id. at 109.
family members and appropriate provider/consultants who have expertise in dealing with the needs of persons with similar disabilities or who are knowledgeable about government benefit systems." 38 These people should be in a "position to recognize the beneficiary's needs and to purchase items and services which best fulfill them." 39

For Gladys, the family member could have been her cousin, Donald, as he was familiar with her situation and lived nearby. Also, his appointment would have avoided the inherent conflict of interest that children face when deciding whether to make disbursements for a parent's care. The other member of the Committee could have been a non-relative nurse or other person knowledgeable about healthcare and Gladys's circumstances. 40

The trust should limit opportunities for self-dealing. For example, residual beneficiaries of the trust and the "primary heirs of the beneficiary should not hold a controlling majority on a Committee" because they "may find themselves in the position of deciding between making an expenditure that will only bring a short term benefit to a severely disabled beneficiary or denying the expenditure in hopes of inheriting the money later." 41 The trust's terms "should require that the Committee members vote on all disbursement proposals, with a simple majority prevailing." 42 The advantages of this trustee-Committee arrangement are that:

The Committee will review the actions of the trustee on an ongoing basis. Financial security is assured. In addition to establishing a system with checks and balances, the intent in using a Committee is to create a case management team which will be well versed in the specific beneficiary's actual needs and will be able to

38. Id. at 108.
39. Id. at 109.
40. Given Gladys and Roy's numerous health problems over the ten years prior to Roy's death, chances are they knew health care professionals and others that they felt comfortable with and who also would have had the knowledge necessary to maximize Gladys's care and government benefits; however, it is not possible for this author to learn and name specific individual(s).
42. Id.
create and follow a plan within the restrictions of the trust to meet those needs. The Committee can establish a regular, ongoing expenditure plan to meet the beneficiary's known regular disability related needs.... The team approach also provides a varied perspective on situations as they arise.\textsuperscript{43}

If Roy's will had created a trust arrangement similar to the one described supra, the opportunity for fiduciary breach would have been almost eliminated, and the Committee would have provided for Gladys's individual needs. It should be noted that the above plan is the optimum; Roy could have done something simpler while still maintaining some checks and balances. For example, he could have appointed co-trustees or he could have required that Tim be bonded. At the very least, the will should have placed the responsibilities of accountant and trustee in different people.

**Giving Tim Power of Attorney**

Despite the flaws in Roy's testamentary plan, Tim did not steal enormous amounts of money until he was also given power of attorney. As previously mentioned, in fall 1998 Gladys was to undergo a serious operation involving an untreated bedsore. Just prior to this operation, she gave Tim her durable power of attorney in case of incapacity. This was a mistake for several reasons.

First, it demonstrates a lack of advance planning because it was done at the last minute without much forethought. Some members of the family are not even sure why or when Tim was chosen. If the family had discussed a power of attorney in advance while Gladys was of sound mind, they may have appointed someone else.

Second, it did not provide layers of protection against the worst-case scenarios. Instead, it made the family's sole unbonded accountant and trustee Gladys's power of attorney. This is unacceptable as "powers of attorney...always carry the

\textsuperscript{43} Id. at 110.
possibility of making an individual vulnerable to exploitation from a less-than-trustworthy agent." This risk grew exponentially given Tim's other powers. If Gladys and her family had considered the worst-case scenario that Tim might steal from them, then they would not have given a person with already too much power even more power. Rather, they would have given someone else power of attorney thereby maintaining a check on Tim in case Gladys became incompetent.

Finally, giving Time the power of attorney shows a lack of periodic communication. After Gladys's operation and her subsequent mental deterioration, the children became skeptical of Tim. They even researched removing him as trustee. Despite this they failed to discuss that he still had Gladys's power of attorney. If they had met every few years to review Gladys's situation they certainly would have asked whether she had a power of attorney and who had it. Unlike Tim's trusteeship, Gladys could have revoked his power of attorney by destroying it, directing another person to destroy it in her presence or by signing a written and dated statement expressing her intent to revoke.45

Fortunately, Gladys recovered from her operation and would not be incapacitated for six more years and thus Tim's durable power of attorney was not used until 2004. This is fortunate because it costs approximately $100,000 a year for Gladys to live at home. If Tim's power of attorney had been activated and he had stolen large amounts of her money earlier, she may not have had the resources to remain at home for as long as she has. Although the power of attorney was not activated until 2004, Gladys began showing signs of dementia much earlier.

45. WIS. STAT. ANN. § 243.10 (WEST 2007).
ONSET OF DEMENTIA

As soon as dementia symptoms, such as memory loss, poor judgment, difficulty with language, and a reduction in reasoning capability became apparent, Gladys should have been taken to a doctor to obtain a diagnosis.\textsuperscript{46} A doctor can evaluate a person’s mental status, memory, cognitive skills, as well as conduct laboratory tests to determine whether the dementia can be treated.\textsuperscript{47} Indeed, Gladys’s diabetes or medications may have been causing her memory loss and confusion.\textsuperscript{48} On the other hand, in the worst-case scenario that Gladys had Alzheimer’s disease, early treatment might have reduced its symptoms.\textsuperscript{49}

Gladys and her family did exactly what they should not have done, however, and assumed that her signs of dementia were a normal part of the aging process. Even if Gladys’s dementia was not treatable, early awareness of what type of dementia she had would have provided the opportunity for communication and advance planning for her particular circumstances. This would have allowed Gladys to make her wishes known while she was capable of evaluating her options.\textsuperscript{50}

One thing that Gladys and her family could have planned for is that she might become completely incompetent and what this would mean for the partnership. Three ways a person can protect their assets in case of dementia are to have a guardian, to give someone a durable power of attorney, or to create a trust.\textsuperscript{51}

"Guardianship is the device by which the judgment of a more capable person is substituted for the judgment of an

\textsuperscript{46} MAYO CLINIC, FAMILY HEALTH BOOK 588 (Scott C. Litin ed., 3d ed. 2003).
\textsuperscript{47} Id. at 594.
\textsuperscript{49} MAYO CLINIC, supra note 46, at 590.
\textsuperscript{51} See LAWRENCE A. FROLIK & ALISON MCCRYSTAL BARNES, ELDER LAW CASES AND MATERIALS 503 (4th ed. 2007).
impaired person." An honest guardian may provide the most complete protection of an elderly person's assets because the guardian has total control over their ward's affairs. This degree of control, however, may also make a guardianship undesirable as it usually entails a near total loss of autonomy, such as control over living arrangements, finances, and other individual rights. Another drawback to a guardianship is the stigma associated with not being able to make one's own decisions. This stigma may be so deleterious to an individual's psyche as to lead to their demise.

Furthermore, a guardian's amount of control combined with a ward's low mental acuity creates an opportunity for an unscrupulous guardian to exploit the ward. Courts offer some deterrence to exploitation as they appoint and oversee the guardian, but they cannot monitor everything. Thus, because a guardianship results in an almost complete loss of self-determination and still leaves the potential for financial exploitation, a power of attorney or trust will often be a better option to protect the assets of a person with dementia.

The durable power of attorney is the main non-judicial way that incapacitated people manage their property. Indeed, Gladys established a durable power of attorney in Tim. Although there were problems, as previously discussed, in selecting Tim per se, it was good advance planning to create a durable power of attorney. The agent with the power of attorney is able to act on behalf of the principal in whatever way

52. Id. at 459.
53. CARNOT, supra note 6, at 13.
54. See FROLIK & BARNES, supra note 51, at 443. See also, e.g., Fla. Stat. Ann. § 744.3215 (2005) (providing some examples of rights lost, including the right to vote, travel, contract, and to consent to medical treatment).
55. FROLIK & BARNES, supra note 51, at 443. See also Dale v. Hahn, 440 F.2d 633, 636 (2d Cir. 1971) (explaining that the stigma of incompetency with its perceived associations, such as irresponsibility is very important to an individual as it harms their community standing).
56. FROLIK & BARNES, supra note 51, at 445.
57. See id. at 458.
58. Id. at 503.
the creating document specifies.\textsuperscript{59}

The document might specify that it is a "springing power of attorney" and thus the power of attorney does not activate until the principal becomes incompetent.\textsuperscript{60} This allows the principal to retain plenary power as long as they can, but it begs the question of how to determine when they become incompetent.\textsuperscript{61} This may be problematic because people often experience a steady diminution in mental cognizance rather than a sudden change.\textsuperscript{62} Thus, it might be difficult to demarcate where their capacity has crossed the threshold into incapacity.\textsuperscript{63} In addition, a person's competency may vary depending on the day or time of day.\textsuperscript{64} Therefore, a document creating a springing power of attorney should specifically delineate how the principal is to be declared incompetent.\textsuperscript{65} Otherwise, a principal and her family could find themselves fighting over competency in court as if it was a guardianship, which would defeat one of the advantages of the durable power of attorney.\textsuperscript{66}

Aside from the problem of determining incapacitation under a springing power of attorney, there are two other problems with a power of attorney in general. The first, which was described above, is the potential for abuse because of the amount of the agent's power combined with fewer oversights as compared to a guardianship.\textsuperscript{67} The second is that a principal might improvidently give away large amounts of her assets or sell property far below market value.\textsuperscript{68} Typically, a power of

\textsuperscript{59} See Lemke & Moskowitz, supra note 44, at 9. See also CARNOT, supra note 6, at 19.

\textsuperscript{60} Lemke & Moskowitz, supra note 44, at 9.

\textsuperscript{61} FROLIK & BARNES, supra note 51, at 514.

\textsuperscript{62} Id.

\textsuperscript{63} Id.

\textsuperscript{64} Recognition that people with dementia have their "good days and bad days" is seen in the validity of wills, see e.g., RESTATEMENT (THIRD) OF PROPERTY: WILLS & DONATIVE TRANSFERS § 8.1 cmt. m (2003) (explaining that a will is valid if written during a "lucid interval").

\textsuperscript{65} FROLIK & BARNES, supra note 51, at 514.

\textsuperscript{66} Id.

\textsuperscript{67} Id. at 504.

\textsuperscript{68} CARNOT, supra note 6, at 21, 23.
attorney allows the principal to still act on her own behalf.69 Thus, this does not prevent a principal who may have incompetent moments or whom people do not yet realize is incompetent from unwisely disposing of her assets.70 This could be disastrous if a person with dementia disposes of more than they need to support themselves. A guardianship would not allow a person to do this, but it would also not allow a person to do many other things and therefore a trust would be a better way to protect against this worst-case scenario.

A trust can strike the balance of maintaining an individual’s autonomy while also protecting their assets. This is partly because trusts are extremely flexible and can be adapted to the intricacies of a particular settlor’s situation.71 For instance, Gladys could have made the trust revocable or irrevocable. She could have made herself sole trustee, co-trustee, or appointed a corporate fiduciary. She also could have decided which property would go into the trust.

If Gladys had placed her share of the farm in the trust, the trustee would have been obligated under fiduciary responsibilities not to sell it below market value. Also, the settlor can balance putting enough resources into the trust to maintain a safety net in case they did become improvident, while leaving enough assets outside the trust to preserve some financial self-determination.72 Furthermore, the assets in the trust would avoid probate, which may provide an additional benefit of estate planning ease and financial savings.73

The trust offers more layers of protection than a power of attorney.74 For example, if Gladys had made her children remainder beneficiaries, they would have been motivated to monitor the trustee and had the ability to enforce the trustee’s

69. See FROLIK & BARNES, supra note 51, at 513-14.
70. See id. at 514.
71. See DUKEMINIER, supra note 25, at 486-87. “The trust...can be used for purposes ’as unlimited as the imagination of lawyers.’”
72. FROLIK, supra note 51, at 530.
73. Id.
74. FROLIK, supra note 51, at 533.
fiduciary obligation in the event of Gladys’s incompetence. Lastly, a trust might allow for easier property management over a power of attorney because an agent may have more difficulty with third parties accepting their power than a trustee.75

Of course, in hindsight this all seems obvious and easily done. No doubt, it is difficult for an elderly person to face the possibility that they may become incompetent and that they should voluntarily relinquish control of their assets. Indeed, “some parents are concerned that they are losing their dignity by giving up complete control over their property. In many families, control of the purse strings guarantees love, affection and attention from the children, as crass as this may seem.”76

For whatever reasons, Gladys did not appoint a guardian or create a trust, and so as her dementia progressed, her children were faced with the extremely difficult decision of whether to pursue an involuntary guardianship in order to adequately protect her. This is a painfully risky option for two reasons. First, it can be expensive, as an involuntary guardianship requires a court hearing, the hiring of lawyers, and the hiring of doctors to testify about the elderly person’s competency.77 Second, and most importantly, “[t]he odds of securing an involuntary guardianship when the parent is at least partially competent are practically nil. However, the risk of destroying your relationship with your parent is 100 percent.”78

These were not risks that Gladys’s family was willing to take. Instead, they thought current arrangements and a full-time caregiver would protect Gladys from financial exploitation.

**Hiring a Caregiver**

After Gladys’s 1998 operation, she needed full-time care. Gladys’s daughter, Nancy, selected Lori for this job. Lori

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75. Id.
76. CARNOT, supra note 6, at 111-12.
77. Id. at 114.
78. Id.
seemed like a reasonable choice because she had worked with county nursing and had taken care of Gladys previously for short periods. Nancy handled all the contracting with Lori.

Nancy's controlling involvement of Gladys's care may have been a red flag that financial exploitation was on the horizon. From approximately 1990 until Roy's death in 1996 Nancy had been estranged from the family. Then after Roy's death, she became very involved in Gladys's affairs. The National Center on Elder Abuse lists the "sudden appearance of previously uninvolved relatives claiming their rights to an elder's affairs and possessions" as a warning sign of financial exploitation. In selecting Gladys's caregiver and establishing how that caregiver would be paid Nancy retained control of Lori. In effect, this gave Nancy a twenty-four hour monitoring system of Gladys and everything she did, including her contact with her other children.

A second warning sign is "abrupt changes in a will or other financial documents." Just prior to her operation and at Nancy's behest, Gladys modified her will. One addition to the will was a five thousand dollar bequest to Lori, even though Lori had not yet begun her full-time care giving. This exemplifies a third warning sign, as it is an "unexplained sudden transfer of assets to . . . someone outside the family." The other children were unaware of this gift to Lori until 2003 when a new will was drafted, again at Nancy's behest, and Lori's gift was increased to fifty thousand dollars.

Although Nancy's siblings suspected she was back in the picture to financially exploit Gladys, they were all happy to have found a full-time caregiver. After all, Gladys, like eighty-nine percent of people aged fifty-five or older, wanted to remain in her current home as long as possible. Once again, however,

80. Id.
81. Id.
82. ADA-HELEN BAYER & LEON HARPER, AARP, FIXING TO STAY: A NATIONAL
Gladys and her family failed to consider the worst-case scenarios and to provide layers of protection to guard against those scenarios.

This is a crucial time to consider the worst outcomes because an elderly person alone with a paid caregiver offers an acute potential for abuse. Financial exploitation may result when an elderly person becomes too attached to a caregiver, which can happen when two people are perpetually together. In addition, a caregiver may try to take over an elderly person's life. For example, in Puckett v. Krida, an elderly woman with dementia was close to her family until her family hired full-time caregivers. The caregivers began separating her from her family, listening in on her phone conversations, and convincing her that her family wanted to place her in a nursing home, her greatest fear. Eventually the elderly woman rewrote her will to include her caregivers and remove her family.

Certainly many full-time live-in caregivers are providing an admirable altruistic service; however, some of them can cause problems. Carnot writes:

> Having a full-time, live-in caregiver can present a unique problem. These folks often don't have much of a life of their own. Once they settle into your parent's home, what little life they may have had is likely to disappear almost completely. As a result, the caregiver can easily become overly involved with your parent's life, particularly since the caregiver is the one who is now physically closest to your parent and most responsible for fulfilling your parent's needs. The caregiver can begin subtly to manipulate your parent's

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83. CARNOT, supra note 6, at 199-200.
84. See id. at 223.
85. Id. at 205-06.
87. Id. at 23-24.
88. Id. at 16.
89. See generally CARNOT, supra note 6, at 210-16 (discussing ways to identify good from bad potential caregivers).
To make matters worse, an elderly person may accept this control and deny cases of financial exploitation out of fear of abandonment.\textsuperscript{91}

Shortly after Lori became Gladys’s full-time caregiver, she became overly involved in family affairs. For example, she would occasionally listen in on phone conversations between Gladys and her children. Lori’s involvement particularly increased after 2000 to the point where the children were using her as a mode of communication between themselves and Gladys. They would also ask Lori for information regarding the activities of the other siblings. This helped foster an atmosphere of mistrust and paranoia amongst the children.

This paranoia increased further in 2001, when Nancy began giving Lori an annual five thousand dollar bonus from Gladys’s healthcare account. In one case, Nancy demanded the five thousand dollars from Tim as trustee. Nancy did not consult her siblings before giving these bonuses.

Gladys and her family should have communicated what they wanted in a full-time caregiver before hiring someone. If they still hired Lori they should have met annually or semi-annually to discuss whether Lori was doing the job they wanted. Also, given Nancy’s sudden return to family affairs and her sole control in selecting Lori as caregiver, the other siblings should have expected the worst-case scenario that Nancy was going to use Lori as a tool to monitor Gladys and the other children. To protect against this, an independent caregiver should have been hired or at least there should have been co-caregivers who would work at different times. Using co-caregivers would have also helped to prevent any sort of pathological attachment and control between Gladys and the caregiver.

How to handle gifts and gratuities should always be addressed when first hiring a caregiver.\textsuperscript{92} Ordinarily, the

\textsuperscript{90} CARNOT, supra 6, at 205-06.
\textsuperscript{91} Id. at 106.
\textsuperscript{92} CARNOT, supra note 6, at 202.
concern is that an elderly person with dementia may make unnecessary gifts to the caregiver. Here, the problem was a child deciding unilaterally to give expensive gifts. One way to prevent either of these situations is to prepare a formal contract beforehand wherein the caregiver promises not to accept any gifts from the elderly parent and the children agree not to give any gifts unless a majority of the children agree to it.

It should be noted that total gift prohibition is at the extreme end of the protection continuum. That is, rather than prohibit the acceptance of all gifts, the monetary value of gifts could be limited to a number that fits a particular family's circumstances, for example, not more than five thousand dollars per year. The point is to avoid a situation in which an elderly person with dementia might gift away large portions of their assets.

Setting a reasonable limit on gifts as opposed to a total ban would also maintain some of the elderly person's autonomy. The safeguards in this section and other sections of this paper often represent the greatest degree of protection. It is imperative to remember that when planning for financial protection of an elderly person, one must balance the level of protection with maintaining the elderly person's dignity, respect, and autonomy as much as reasonably possible. The purpose of safeguards is to provide peace of mind and to protect an elderly person's assets so that they may live their remaining years in the way they desire. This purpose is defeated if in the process of establishing safeguards the elderly person is forced to sacrifice to the point that their enjoyment of life is lost.

93. See id. at 69 (discussing examples of poor judgment secondary to dementia).
94. Id. at 202-03.
95. See generally id. (describing how to safely give a gift to a caregiver).
96. Id.
97. See generally id. at 1-18 (describing the situation in which Carnot's father, at the behest of his caregiver, liquidated his life savings and intended to give it to his caregiver before Carnot discovered what was happening on a chance phone call to his father's stockbroker).
98. FROLIK & BARNES, supra note 51, at 25.
99. See id.
It may provide peace of mind and less stress to hire a caregiver through an agency. Although hiring a caregiver through an agency is cost prohibitive for most people, and may have been for Gladys as well, it can offer several advantages over hiring privately. First, the agency does much of the work.\textsuperscript{100} This would have been helpful in Gladys’s situation, as her nearest child lived four hours away. Second, the agency would do a background check.\textsuperscript{101} Fortunately, Lori was not a criminal, but she could have been. Third, the agency would take care of payroll.\textsuperscript{102} Recall that Tim cost Gladys hundreds of dollars in IRS fines for not doing Lori’s payroll on time. These fees would have been avoided if Lori had worked through an agency. Finally, and very importantly, the agency’s caregiver would be bonded and insured.\textsuperscript{103} Thus, depending on one’s circumstances and whether one has the financial resources, hiring a caregiver through an agency may be a better alternative to hiring privately.

Lori’s part in Gladys’s financial exploitation occurred via her omnipresence in Gladys’s life and affairs. For example, when the developer became interested in purchasing the farm, his representative met with Lori because she was the only competent person at Gladys’s home. It is believed that the developer understood Lori’s power over Gladys, and he therefore may have offered her a reward if she helped him complete his purchase of the farm.

Indeed, Lori potentially played a decisive role in fostering the sale of Gladys’s farm. This would have been much more difficult if there had been layers of protection, such as co-caregivers or an independent caregiver unconnected to Nancy and not as involved in Gladys’s family affairs.

\textsuperscript{100} \textsc{Carnot}, supra note 6, at 213.
\textsuperscript{101} \textit{id}.
\textsuperscript{102} \textit{id}.
\textsuperscript{103} \textit{id}.
A common way that a caregiver may exploit an elderly person with dementia is by convincing that person to write them checks.\textsuperscript{104} For example, they may tell the elderly individual that they forgot to pay them or that they need money for a cause to which the elderly person is sympathetic. Lori did not dupe Gladys into writing any unauthorized checks; however, some of Gladys’s children did.

Once an elderly person begins to suffer dementia it becomes easier for individuals to take advantage of that person, particularly if the exploiters are the only natural protectors of that person. In this case, these were Gladys’s children. Prior to convincing her to sell her farm, some of Gladys’s children were engaged in gratuitous check reception from Gladys’s accounts. Note that although there are no allegations that Gladys’s signature was ever forged, it was obtained through devious means for the farm’s purchase agreement, on numerous checks, and on the aforementioned affidavit. These devious means may be akin to forgery since Gladys did not know what she was doing. This is important because forgery of an elderly person’s signature in relation to their finances or property titles is another warning sign of financial exploitation.\textsuperscript{105}

If Gladys had engaged in advance planning, she could have mitigated the opportunity for gratuitous check reception, as well as the amount of money that could be received. For example, if Gladys had appointed a guardian, there would not have been a person with dementia signing checks. When, however, an elderly person is still semi-competent and does not want to appoint a guardian, they can use several other safeguards.

First, they can keep only a necessary amount of money in their checking account and then have an automatic transfer set up each month from another account thereby limiting the

\textsuperscript{104} See National Center on Elder Abuse, \textit{supra} note 79.

\textsuperscript{105} \textit{Id.}
A key to this is to make sure the bank does not have overdraft protection on the account, which would defeat the purpose of limiting the amount of money available. Second, one could establish a dual-signatory checking account, which would require both the elderly person's signature and someone else's to sign all checks. Whoever is the second signer should get a copy of each bank statement to make sure they are aware of all expenditures. Finally, the elderly person can alert the bank to be on the lookout for any financial oddities, such as a large check or an overdraft. Banks are becoming ever more cognizant that they can play an important role in protecting elders. Recall that it was a bank employee's informing the Arrow County Human Services Department of Aging which led to Tim's arrest.

**Judge Sanford's 2004 Ruling**

In 2004, Arrow County Judge Joseph Sanford held that the sale of Gladys's farm violated the partnership agreement and that Gladys was no longer competent to handle her own finances. Since Tim Jones held Gladys's power of attorney, Judge Sanford gave him authority to supervise her financial affairs and to perform her duties as general partner in her stead.

Activating Tim's power of attorney was the final step in creating the perfect storm for fiduciary breach. This made Tim the sole unbonded trustee, power of attorney, and accountant for an incompetent eighty-six year old woman. In addition, what few reporting requirements Tim had vis-à-vis the trust, were not enforced. Thus, the only check on Tim... was Tim. Approximately two years after Judge Sanford's decision, Tim was arrested and accused of stealing $248,000 from Gladys's

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106. CARNOT, supra note 6, at 116.
107. Id.
108. Id. at 44.
109. Id. at 116.
110. Id. at 115.
111. Id.
accounts and trust.

Judge Sanford's failure, as has been seen throughout this paper, was in not considering the worst-case scenarios and creating layers of protection to guard against those scenarios. Given the family conflicts, Judge Sanford wanted to put someone in charge that would not be influenced by personal interests and because Tim had spent his career managing finances, he was a logical choice. Plus Gladys had given him her durable power of attorney. Judge Sanford, however, should have considered that when someone has a power of attorney there is a great risk of abuse:\textsuperscript{112}

Once a financial durable power of attorney is validly executed, it can be an extremely powerful document, authorizing an agent to perform virtually any act with respect to the principal's property that the principal could perform. This breadth of power coupled with few required execution formalities creates a fear of overreaching by unscrupulous agents.\textsuperscript{113}

To create layers of protection, Judge Sanford could have appointed a guardian for Gladys. This person would have reviewed Tim's actions as trustee. Even Tim's knowledge that someone competent might be reviewing his activity may have offered enough of a deterrent. Another option is that Judge Sanford could have required an independent accounting of Tim's activities. Technically Tim was supposed to report to the court in regards to the trust, but there were few standards on what he needed to report and no judicial action was taken when he failed to report.\textsuperscript{114} Third, Judge Sanford should have established a detailed payment schedule for what Tim was to be paid. Neither his trustee agreement nor his power of attorney

\textsuperscript{112} See Estate of Lakatosh, 656 A.2d 1378, 1382 (Pa. Super. 1995) (explaining that once an elderly person gave neighbor power of attorney, the neighbor "improperly converted" approximately $200,000 of the woman's assets for his own use).

\textsuperscript{113} Carolyn L. Dessin, Acting as Agent under a Financial Durable Power of Attorney: An Unscripted Role, 75 Neb. L. Rev. 574, 582 (1996). There are concerns that a financial durable power of attorney may be "an instrument of abuse rather than a useful tool." Id. at 575.

adequately described what he would be paid. Indeed, when Tim was arrested he claimed the money that was missing was owed to him out of his regular fees.

Finally, Judge Sanford could have required that Tim be bonded. Judges often require bonds when guardians are appointed, so it would not have been extraordinary for a judge to require one in this situation. Bonding, at least, would have assured that no matter what other safeguards were in place, if Tim stole, Gladys would be repaid.

AFTERMATH: "A SAD, SAD DAY."

Tim was arrested in the summer of 2006. Around this time all of Gladys's accounts were frozen until it could be decided who would takeover her finances. A few months later, a hearing was held with Judge Sanford to appoint a guardian for Gladys.

At last, layers of protection were created. An independent person with guardianship experience was placed in charge of Gladys's personal finances and the trust. This person closed all but two of Gladys's accounts so there could be no more questionable check writing. Gladys's daughter, Nancy was made guardian of Gladys's person so that she can make recommendations about Gladys's financial needs vis-à-vis her numerous ailments. Recall that this dual-guardianship arrangement is akin to the trustee-Committee format recommended above.

The guardian is required to file regular detailed accounting reports with the court. Lastly Judge Sanford required that the guardian be bonded both as guardian of Gladys's finances and as trustee. Thus, even with all the other checks, if the guardian stole Gladys's remaining money, it would be reimbursed.

In the winter of 2007, Tim pled guilty and reimbursed Gladys an initial $150,000. Judge Sanford sentenced him to six months in county jail, five years probation, and to paying back the rest of the misappropriated funds once the total could be

115. CARNOT, supra note 6, at 113.
determined. The judge said that Tim let down both the court and Gladys, and Tim's attorney called it a sad, sad day.

CONCLUSION

Financial exploitation of elderly persons with dementia is particularly troublesome for several reasons. In a short time, an unscrupulous individual can wipe out an elderly person's lifetime of saving. An elderly person with dementia has neither the time nor the capability to earn that money back. Also, assuming the thief can be found and still has assets, the elderly person may not live long enough to see restitution. Furthermore, the elderly only have a certain amount of funds to live on and if those funds are reduced then the amount of time they can live as they wish also is reduced. For example, Tim's theft instantly reduced the amount of time Gladys could remain at home by 2.5 years. Finally, there is something sad and unconscionable in exploiting people who are incapable of defending themselves. After all, "people with dementia can't remember, and they can't remember that they can't remember." 116

It is for these reasons that it is so important to engage in the four steps proffered in this paper. Gladys's financial exploitation almost certainly would have been avoided if she and her family had engaged in advance planning, periodic communication regarding their advance planning, expecting the worst-case scenarios, and establishing layers of protection to guard against those scenarios.

Even Judge Sanford failed to provide layers of protection against the worst-case scenario when he activated Gladys's power of attorney. Tim was a respected member of the community and had been a financial adviser for many years. Also, recall that Gladys's other exploiters were her own children. Thus, Gladys's experience demonstrates that anyone is capable of financially exploiting an elderly person with dementia and

116. CARNOT, supra note 6, at 72.
therefore an elderly person's assets must always be protected via multiple checks and balances.