



M A S S A C H U S E T T S B A R A S S O C I A T I O N

June 23, 2014

James D. Gallagher
President
One Fund Boston
18 Tremont Street
Suite 330
Boston MA 02108

Re: Comments to One Fund draft protocol, second distribution of funds

Dear President Gallagher:

In support of hearing-impaired and traumatically brain injured survivors of the Boston Marathon bombing, the Massachusetts Bar Association writes in strong opposition to the “draft protocol” for the second distribution of funds. While we are encouraged that the One Fund has more directly acknowledged the class of survivors living with sensory impairment, traumatic brain injury and other invisible wounds, we believe the proposed solution to provide medical programming in lieu of direct One Fund distributions to individuals in this community unfairly excludes many worthy survivors from the financial lifeline they so desperately need.

Like those who suffered severe physical injuries, survivors who suffered serious cognitive or sensory injuries have seen their abilities to work or perform basic daily functions severely diminished — some permanently. For reasons that the One Fund has never fully explained, those who were not hospitalized yet suffered such devastating and permanent injuries as hearing loss or TBI were not identified for awards of more than \$8,000 from the first distribution, even though a victim who spent just one night in a hospital and made a full recovery from his or her injury received an award of \$125,000.

When your first administrator, Attorney Kenneth Feinberg, met with officials of the Massachusetts Bar Association shortly after the bombing to discuss his plans for allocating the first distribution (ultimately around \$60 million), we urged him to ensure that the protocol would make awards to every one of the victims in accordance with the severity of their injuries. Rather than adopting this approach, Attorney Feinberg insisted that he had been directed to get the funds distributed as soon as possible and that speed dictated a “rough justice” approach (his words) whereby some victims would get no award from the One Fund because it was not practical to read the medical records of all the survivors.

We hold Attorney Feinberg in high regard, having worked closely with him on the 9/11 pro bono attorney response. Nevertheless, whatever merit Attorney Feinberg's rationale once had, its time has long passed. Speed is no longer an issue, and “rough justice” should be replaced with true justice for every victim injured by the marathon bombings.

There are only a handful of those who suffered these "invisible injuries" who were excluded from receiving meaningful awards by the One Fund's "days in hospital" approach, and the One Fund now has ample time and resources to carefully review their records. We urge the One Fund not to prejudge the victims, but to instead read their records and give them awards from the remaining funds consistent with the severity of their injuries, just as you did for all other victims of this tragedy.

We appreciate the opportunity to comment and acknowledge the difficult work you have undertaken to dispense justice. It is in this spirit that we respectfully submit these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Douglas K. Sheff". The signature is fluid and cursive, with the first name "Douglas" written in a larger, more prominent script than the last name "Sheff".

Douglas K. Sheff

President, Massachusetts Bar Association