

**BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF THE SUPREME COURT OF OHIO**

In re:

Complaint against:

Board Case No. 2014-081

**James William Thomas, Jr.
Attorney Reg. No. 0074051**

SCO Case No. 2015-1001

Respondent

Disciplinary Counsel

Relator

**SUPPLEMENTAL REPORT AND RECOMMENDATION
ON REMAND FROM THE SUPREME COURT OF OHIO**

{¶1} This matter comes before the panel on remand from the Supreme Court of Ohio.

Disciplinary Counsel v. Thomas, 143 Ohio St.3d 1410, 2015-Ohio-2851.

{¶2} On June 15, 2015, the findings of fact, conclusions of law, and recommendation of the Board of Professional Conduct of the Supreme Court of Ohio were filed with the Supreme Court setting forth the recommended sanction of an indefinite suspension with conditions that included a requirement that Respondent make full restitution in the amount of \$208,095.15 which included all monies owed to the victims of Respondent's misconduct as well as his professional liability insurance carrier.

{¶3} On July 10, 2015, a joint motion to remand was filed challenging the portion of the Board's report that required restitution to Respondent's professional liability insurance carrier.

{¶4} On July 16, 2015, the Court granted the joint motion for remand for further consideration by the Board.

{¶5} On July 27, 2015, Respondent filed a brief on remand as well as a second set of

agreed stipulations.

{¶6} Exhibit 14 of the stipulations is a letter dated July 23, 2015 from George Peterson, Claim Case Manager, for Zurich North America Professional Programs Claims to George D. Jonson, counsel for Respondent. That letter unequivocally states that American Guarantee & Liability Insurance Company, the malpractice carrier for the Respondent, paid on the Jeryl A. Sims/Michel claim, \$89,950 to settle that claim and, in addition, the carrier planned to close its file, seeking no recoupment from Respondent.

{¶7} The panel agrees with the uncontroverted statement of law as set forth in Respondent's brief affirming the notion that Ohio courts have consistently forbidden insurers from exercising a right of subrogation against their own insured. See *Globe Ins. Co. v. Sherlock*, 25 Ohio St. 50, 1874 WL 37, paragraph three of the syllabus (1874).

{¶8} More recently in the case of *Indiana Ins. Co. v. Barnes*, 165 Ohio App.3d 262, 2005-Ohio-6474, ¶21 (10th Dist.) that Court restated what is black letter law:

No right of subrogation exists where the tortfeasor is also an insured under the policy which gives rise to the right of subrogation, for an insurer has no cause of action against its insured for negligence.

{¶9} Since Respondent's carrier has no legal right to repayment from Respondent, this panel strikes the requirement that Respondent make full restitution in the amount of \$208,095.15 which includes all monies owed to the victims of Respondent's misconduct and his professional liability insurance carrier and instead substitutes the original recommendation as follows:

Respondent shall not seek reinstatement to the practice of law until he has completed his period of incarceration and has paid the restitution ordered by the court in *State of Ohio v. James W. Thomas, Jr.*, Preble County Case No. 14CR011521.

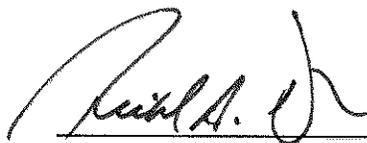
BOARD RECOMMENDATION

Pursuant to Gov. Bar R. V, Section 12, the Board of Professional Conduct of the Supreme Court of Ohio considered this matter on October 2, 2015. The Board adopted the supplemental report. The Board further modified the recommendation of the panel set forth in ¶9 of this report to read as follows:

Respondent shall not seek reinstatement to the practice of law until he has completed his period of incarceration and has paid the restitution to Edward Tucker, Roberta Burton, and Keith Overholtz as ordered by the trial court in its entry dated June 17, 2014 in *State of Ohio v. James W. Thomas, Jr.*, Preble County Case No. 14CR011521. Stipulations, Ex. 5.

The Board adopted the recommendation as modified and transmits this supplemented report to the Supreme Court for consideration in relation to the initial report and recommendation filed on June 15, 2015.

**Pursuant to the order of the Board of Professional
Conduct of the Supreme Court of Ohio, I hereby certify
the foregoing recommendation as that of the Board.**



RICHARD A. DOVE, Director