

[Cite as *In re Thomas*, 2007-Ohio-2270.]

**IN THE COURT OF CLAIMS OF OHIO
VICTIMS OF CRIME DIVISION**

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|------------------------|---|---------------------------|
| IN RE: ISIAH M. THOMAS | : | Case No. V2006-20925 |
| BARBARA J. THOMAS | : | Commissioners: |
| Applicant | : | Tim McCormack, Presiding |
| | : | Karl C. Kerschner |
| | : | Randi Ostry LeHoty |
| | : | |
| | : | <u>ORDER OF A THREE-</u> |
| | : | <u>COMMISSIONER PANEL</u> |

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{¶1} The applicant filed a reparations application seeking reimbursement of expenses incurred with respect to a March 27, 2004 aggravated vehicular homicide incident. On June 5, 2006, the Attorney General granted the applicant an award of reparations in the amount of \$5,721.15 for unreimbursed funeral expenses. On September 25, 2006, the Attorney General reconsidered the matter and modified the previous decision to deny the claim pursuant to R.C. 2743.60(D) contending that all the applicant's economic loss had been or may be recouped from a collateral source, namely from a civil suit settlement against Progressive and State Farm Insurance Companies. On October 6, 2006, the applicant filed a notice of appeal to the Attorney General's September 25, 2006 Final Decision. On January 10, 2007 at 11:05 A.M., this matter was heard before this panel of three commissioners.

{¶2} Neither the applicant nor anyone on her behalf appeared at the hearing. An Assistant Attorney General attended the hearing and presented brief comments for the panel's consideration. The Assistant Attorney General reiterated her argument for denying the applicant's claim pursuant to R.C. 2743.60(D). After a brief discussion of the claim, the panel chairman concluded the hearing.

{¶3} From review of the file and with full and careful consideration given to all the information presented at the hearing, we find that the applicant incurred funeral expense in the amount of \$5,721.15. On August 1, 2006, the Mahoning County Probate Court issued an Entry Approving Settlement and Distribution of Wrongful Death and Survival Claims *In the Matter of the Estate of Isiah M. Thomas*. The court approved a gross settlement totaling \$37,000.00 against Progressive and State Farm Insurance Companies. The sole beneficiary, Barbara Thomas, received a net settlement amount totaling \$25,440.10.

{¶4} Revised Code 2743.51(B)(9) states:

(B) "Collateral source" means a source of benefits or advantages for economic loss otherwise reparable that the victim or claimant has received, or that is readily available to the victim or claimant, from any of the following sources:

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim that exceeds fifty thousand dollars.

{¶5} According to R.C. 2743.51(B)(9), we find the settlement qualifies as “that portion of *all contracts of insurance payable to the claimant on account of the death of the victim*” (emphasis added). However, because the civil settlement does not exceed \$50,000.00, we further find that the applicant is entitled to full recovery of funeral expense. Therefore, the September 25, 2006 decision of the Attorney General shall be reversed to award \$5,721.15 to the applicant for unreimbursed funeral expense.

{¶6} IT IS THEREFORE ORDERED THAT

{¶7} 1) The September 25, 2006 decision of the Attorney General is REVERSED to render judgment in favor of the applicant in the amount of \$5,721.15;

{¶8} 2) This claim is referred to the Attorney General pursuant to R.C. 2743.191 for payment of the award;

{¶9} 3) This order is entered without prejudice to the applicant’s right to file a supplemental compensation application, within five years of this order, pursuant to R.C. 2743.68;

{¶10} 4) Costs are assumed by the court of claims victims of crime fund.

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TIM MC CORMACK
Presiding Commissioner

KARL C. KERSCHNER
Commissioner

RANDI OSTRY LE HOTY
Commissioner

ID #\3-dld-tad-011207

A copy of the foregoing was personally served upon the Attorney General and sent by regular mail to Mahoning County Prosecuting Attorney and to:

Filed 3-2-2007
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To S.C. Reporter 5-11-2007

Case No. V2006-20925

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ORDER