

## Ohio Subrogation Rights Commission

The Ohio Subrogation Rights Commission has issued its final report. This joint legislative commission was created by the Ohio General Assembly to study the effects of the Ohio Supreme Court's decision in *North Buckeye Educ. Council Group Health Benefits Plan v. Lawson*, 103 Ohio St. 3d 188 (2004). The Commission did not issue a majority report because of the lack of the required approval from at least two senators and two representatives serving on the Commission. Consequently, separate sets of recommendations were issued. These recommendations, which again, do not constitute a majority report of the commission, included the following recommendations: a call for the Ohio Department of Insurance to collect and disseminate data regarding the impact of health insurance subrogation recoveries on personal injury claims by injured victims; a proposed bar by the Ohio Department of Insurance regarding "after the fact" reimbursement agreements; a proposed limit by the ODI of health insurance subrogation recoveries to the award for special damages which includes such insurance/subrogation payments, if the jury answers special verdict interrogatories allowing this allocation to be made; a proposal for the Ohio legislature to increase minimum auto insurance coverage; a proposal for the Ohio Supreme Court to require subrogated insurers to intervene in legal proceedings; and, in the case of "catastrophic injury", absent an allocation agreement, a proposal that the parties should be entitled to seek a court order establishing an "equitable pro ration of the recovery."

Obviously, the Amicus Committee will continue to monitor Ohio for further developments, but at present, all subrogation professionals should be pleased that the subrogation rights of health insurers in Ohio have been upheld, notwithstanding the potential for procedural modifications regarding enforcement of such rights.

The Ohio experience has been instructive and will be used in connection with a coalition meeting that is taking place to marshal forces in opposition to anti-subrogation legislation in New York, for which an informational update to all NASP members will be provided shortly.