WORKERS' COMPENSATION "CARVE-OUTS": LAW, BACKGROUND, CRITICISM, AND A TWELVE-STATE TABLE

by David B. Torrey*

The Workers' Compensation Research Institute (WCRI), of which Pennsylvania is a member, presented a webinar on May 23, 2013, that dealt with the issue of "carve-outs." As it turned out, the webinar instructor was one of the original craftsmen of this innovation, so I took good notes, compared them with my earlier observations, and here share the same. I further summarize here the critiques of carve-outs that have been published over the years, and report on the court precedents reflecting trial lawyer challenges to carve-outs. The paper concludes with a twelve-state table that provides for easy access to the law and regulations that govern each state's carve-out program.

I. Background

The term "carve-out" is shorthand for the process by which management and union agree, in a collective bargaining agreement (CBA), to maintain their own medical delivery and dispute resolution process. A "carve-out" is not, notably, an "opt out," because the benefits paid are those required by the workers' compensation law, and review of contested cases still exists in the judicial branch.

The leading scholarly reference on this topic explains that carve-outs have their genesis in the cost crises of the early 1990's:

> One innovative set of reforms adopted in several states allowed unions and employers to collectively bargain their own workers' compensation system, essentially "carving-out" that arrangement from the statutory system. The parties were allowed to negotiate alternative medical and medical-legal arrangements meant to reduce medical costs. Alternative dispute resolution (ADR) mechanisms were encouraged to speed the legal process and reduce litigation-related expenses.[1]

The first experiment with carve-outs occurred in Massachusetts. There, the contractor Bechtel, and the Pioneer Valley Building and Construction Trades Council, formed a CBA, governing a single construction project, which featured such an agreement.[2]

---

* WC Judge, Pittsburgh, PA. Adjuct Professor of Law, University of Pittsburgh School of Law. President, National Association of WC Judiciary. Contact: DTorrey@pa.gov.

[1] DAVID I. LEVINE ET AL., CARVE-OUTS IN WORKERS' COMPENSATION: AN ANALYSIS OF THE EXPERIENCE IN THE CALIFORNIA CONSTRUCTION INDUSTRY (Upjohn Institute 2002). *See also* E. Moscowitz & V. Van Bourg, *Carve-Outs and the Privatization of Workers' Compensation in Collective Bargaining Agreements*, 46 SYRACUSE LAW REV. 1 (1995).

[2] LEVINE, *supra.*

Carve-outs have also been popular in California. The procedure is authorized under the Pennsylvania Act (it was added by Act 44 of 1993),[3] but, as confirmed during the webinar, no CBA in our state has ever featured such an arrangement.

II. The Minnesota Experience

Minnesota is a state where carve-outs have reportedly thrived. One of the original designers of the program, which dates back to 1995, was Mr. Kevin Gregerson. Gregerson, who led the webinar, once worked for the Minnesota Department of Labor & Industry, and he drafted the governing regulations. He has, since that time, worked for the Wilson-McShane Corporation. This entity is a plan administrator for "Taft-Hartley Trust Funds." The company's website explains:

> In 1996, the Board of Trustees of the Union Construction Workers' Compensation Program [UCWCP] selected Wilson-McShane … to develop and administer their vision for an alternative workers' compensation benefit delivery system. Wilson-McShane hired Kevin Gregerson to create and administer this negotiated workers' compensation program, the first of its kind in Minnesota. The program began operating in July 1, 1997 with four participating contractors, four construction trade unions, and two insurance providers. By the summer of 2009, almost 300 union contractors participate in the program, along with union members from 20 different construction trades with membership in over 40 union locals. 18 different insurance providers (carriers, self-insured funds and third-party administrators) are sponsors of the program.[4]

Mr. Gregerson stated that one reason the carve-out statute was enacted was that the construction industry, in particular, felt frustrated with the workers' compensation system. Of course, this is an industry which has many employees working under CBA's. And, as Mr. Gregerson repeatedly noted, carve-outs of this sort are only possible when a CBA is in place. As noted above, the first experiment of this type, in Massachusetts, was in the construction industry. (Gregerson referred to the Massachusetts project as being insured on a "wrap up" insurance basis.[5])

---

[3] Section 450 of the Act, 77 P.S. § 1000.6. *See also* 34 Pa. Code § § 123.401-123.404. *And see* DAVID B. TORREY & ANDREW E. GREENBERG, PA WORKERS' COMPENSATION: LAW & PRACTICE, § 16:112 *et seq*. (Thomson Reuters 3rd ed. 2008).

[4] For the website of this company, see www.wilson-mcshane.com.

[5] The website " Investopedia" defines such a policy as follows: " A liability policy that serves as all-encompassing insurance which protects all contractors and subcontractors working on a large project. Wrap-up insurance is intended for larger construction projects costing over $10 million. Two types of wrap-up insurance are owner-controlled and contractor-controlled…. For example: The owner-controlled insurance program (OCIP) is purchased by the owner on behalf of the builder or contractor. Included in the insurance are workers' compensation, general liability, excess liability, pollution liability, professional liability, builder's risk, and railroad protective liability. While the cost of wrap-up insurance can be expensive, it can also be divided among general contractors and sub-contractors, thus spreading the cost."

One reason that the construction industry felt frustrated was costs. The financial costs of employees' failure to return to work can be very high in the union construction industry context. This is so because no light duty is possible under many CBA's. Gregerson stressed, throughout, that flexibility and customization in the return to work process continues to be key in making a carve-out work as a cost-saving device.

Construction industry leaders were frustrated, but union leaders were as well. Union leaders, he stated, were tired of routinely sending their members to attorneys. They wondered if the "benefit trust experience" (*i.e.*, with pensions and similar plans), which had worked so well, could also operate smoothly and to the benefit of all in the workers' compensation context. Both sides, notably, identified unnecessary legal costs as a motive for creating the program.

In the end, according to Gregerson, "Labor and management were less concerned about reducing litigation costs, than they were in creating a process of resolving disputes about benefit entitlement and liability quickly – as in days or weeks, rather than months or years."[6]

Another construction industry motivation was displeasure with paying high premiums on payroll, as such employers purportedly maintain safer operations than construction contractors *in general.* Of course, the universal method of calculating premium is multiplication of payroll by a standard premium for a field of business, and such calculation makes no distinction between union and non-union employment. Other methods of premium calculation were not – and are not – available, and thus the idea of a money-saving carve-out was attractive.

Yet another motive was the state's vocational rehabilitation benefit available under workers' compensation.[7] This benefit can be very generous, including payment by the employer of up to four years of college. Mr. Gregerson characterized vocational rehabilitation benefits as an item that was often litigated, with workers seeking to leverage employers by making less-than-good-faith vocational rehabilitation demands. Gregerson referred to this process as the "retraining game." (Such hijinks, he asserted, have not been the experience with the carve-out program.)

Mr. Gregerson depicted the carve-out experience in Minnesota as a success, and one that both contractors and unions have "embraced." The overall program goal, which is subject to this embrace, is the employee's return to work in his pre-injury job at union scale with fringe benefits, as soon as possible, in order to minimize financial losses to the injured worker and the contractor. Some evidence exists that construction industry contractors are indeed saving money. Gregerson quoted an independent state agency study to the effect that "[s]ince the UCWCP has lower denial rates, lower costs, and no evidence of greater worker dissatisfaction, and since it is a much simpler system, we conclude that it is worth considering broad use of the UCWCP approach in Minnesota."

[6] E-memorandum to the Author from Kevin Gregerson (July 26, 2013).

[7] It is notable that injured workers in *Pennsylvania* have never had vocational rehabilitation rights under the Pennsylvania Act.

Gregerson did caution that a carve-out, when designed, should have as few regulations as possible. He suggested that the initial Minnesota plan was burdened with too many regulations which, at least initially, impeded system performance.

Under the Minnesota plan, attorneys need not be retained by parties who develop disputes under the carve-out. Attorneys are *not* excluded (see below), as a decision of the Minnesota Supreme Court held that attorneys must be allowed if the parties in some particular case demand the same.[8]

When disputes do occur, several layers of interface between the parties exist. The first level is "Dispute Intervention," followed by "Facilitation," and then "Mediation." If the latter does not give rise to a resolution, the parties proceed to arbitration. The fact-findings of arbitration are final, and review is in the Minnesota Workers' Compensation Court of Appeals – in the same manner, and under the same review standard, that prevails with regard to ALJ appeals.

The law provides that the CBA may establish an exclusive medical provider organization. According to Gregerson, "Injured workers *may* choose their own provider from within the Exclusive Provider Organization [EPO] which has approximately 450 providers of all specialties. The employer/insurer does not have the right to require the claimant to treat with a specific doctor."[9] Obviously, this measure, aimed at medical cost containment, is key to the success of the program.

A physician seeking to be part of a carve-out, notably, must agree to see the claimant on the same day as the accident or other request for a visit. In a carve-out, when it comes to medical treatment, the idea is to have care expedited. A physician who will not abide by the agreement will, notably, be dropped from the plan.

A concern of one audience member was whether a carve-out can obtain health care providers with ease. He expressed this concern given the requirement that participating health care providers *always* promptly see a carve-out employee. Gregerson, in response, insisted that health care providers are not "scared away" by the carve-out requirements.

For those workers who do have permanently disabling injuries, no problem usually exists in motivation to retrain. This is so because of their high time of injury wages. (Gregerson also reminded the audience that union construction workers, when they are off work, not only suffer a wage loss – because of the maximum compensation payable – but also lose valuable pension contributions as well.)

These workers are, under the auspices of the carve-out, *leveraged* to be interested in returning to work. Gregerson believes that the percentage of retrained carve-out construction workers who successfully return to work in new careers is higher than those of workers in the

[8] *Kline v. Berg Drywall*, 685 N.W.2d 12 (Minn. 2004).

[9] E-memorandum to the Author from Kevin Gregerson (July 26, 2013).

conventional plan.

III. Why Carve-Outs Have not Spread Further

Gregerson spoke at length on the issue of why some states, like Pennsylvania, have not experimented with carve-outs, even when the legislature has specifically authorized the same. Nevada is another such state and, indeed, Gregerson has spoken to groups there on the potential for developing carve-outs. Still, no such plans have been developed, and this is so because employers are simply not *leveraged*, economically, to be *interested*. "Employers," Gregerson stated, "feel no pain" in Nevada, because the workers' compensation status quo system is satisfactory to them. For a carve-out to succeed, Gregerson concluded, a situation must exist in a state where the "mutual interests" of employers and employees are served.

Florida and Kentucky also allow for carve-outs, but they have not taken root in those states because, in his experience, unions there are weak. Other states where carve-outs are allowed by statute (and which are not already mentioned above) are Hawaii, Maine, New York, Maryland, and Illinois. He detects activity, however, only in California, Minnesota, Hawaii, New York, Maryland, and Massachusetts.

An interesting webinar exchange occurred when one questioner inquired, "Carve-outs seem like a great idea. Why do certain lobbies not want carve-outs as the status quo governing all employees?" Gregerson replied that not all parties are interested because they may well not want to lose the claims adjustment "tools" with which they are equipped under the current system. One might have expected, in this regard, a jab at the *lawyer* community, but Gregerson instead identified an *employer/carrier* interest. He stressed, in this regard, that some employers may find valuable, and maintain the strategy of, "starving out" injured workers, as a technique of claims adjustment. (This term is universally understood to define the behavior of denying a legitimate claim to try to leverage the worker into either abandoning the claim or accepting a disadvantageous settlement.)

IV. Carve-Outs as in their Own Category

Carve-outs, which are now well-tested, seem like a good idea. Certainly Gregerson made an articulate and formidable pitch for this proposition. Still, one gets the idea that comparing conventional workers' compensation to carve-outs is like comparing the U.S. Post Office to Federal Express. The workers' compensation system is like the USPS, which accepts mail from, and delivers to, *the entire public*. Comp similarly takes care of everybody: union workers, non-union employees, the working poor, the pathetic victims of uninsured employers, even undocumented workers lying paralyzed in their hospital beds.

The carve-outs, meanwhile, are like Fedex, which services a premium market: commercial businesses and individuals who encounter some special emergency. The carve-outs – selective, not unlike like FedEx – take only established contractors, insure the injuries of high paid union workers, and feature, by design, a well-defined and structured work environment.

In any event, are the two programs serving markedly different markets? Surely the answer is yes. Mr. Gregerson, in his articulate remarks, as much as acknowledged the same: those covered by carve-outs, he cautioned, are not "making minimum wage at Home Depot."

V. Critiques of Carve-Outs

What has been the *critique* of carve-outs, and what have the courts said about such programs? A number of in-depth critical analyses of carve-outs in fact exist.

One is a law review article that was penned shortly after the 1993 change to the California Act which authorized carve-outs.[10] The authors, Moscowitz and Van Bourg, were critical of the innovation, and characterized it as largely serving employer interests. In particular, the authors questioned the attempt at excluding lawyers from the process. They identified specific instances where lack of a lawyer by a worker, trapped in a system that has been agreed to by union and employer, would cause him prejudice. The authors also questioned the fairness, and even the constitutionality, of a regime which obliged an individual to give up the right to a hearing before a neutral state adjudicator, when he or she has already given up the right to a jury trial.

This 1995 commentary, notably, was put to the test in a court challenge, in which the California court (1998) ultimately sustained in all respects the validity of the carve-out legislation.[11] The Minnesota Supreme Court, on the other hand, seems to have found cogent the authors' critique. In a landmark 2004 case, the court, after referencing the critique, held that the exclusion of counsel for the employee at the initial facilitation and mediation stages of ADR was violative of the employee's rights.[12] This ruling has had a real effect on the ADR process in Minnesota. According to Mr. Gregerson, "Attorneys are allowed at any time in the ADR process. They initially were not allowed in the meeting until mediation, and we always have insisted that the employee have an attorney for arbitration."[13]

Another major analysis is from 2002, *Carve-Outs in Workers' Compensation: An Analysis of the Experience in the California Construction Industry*.[14] This book, written by David I. Levine and others, provided an explanation of carve-outs and their Massachusetts reform genesis. As the title suggests, the book further details the California experience.

---

[10] Ellyn Moscowitz & Victor J. Van Bourg, *Carve-Outs and the Privatization of Workers' Compensation in Collective Bargaining Agreements*, 46 SYRACUSE LAW REV. 1 (1995).

[11] *Costa v. W.C.A.B.*, 77 Cal.Rptr.2d 289 (California Ct. Appeals 1998) (legislature's creation of carve-outs was not in violation of California constitutional proviso authorizing workers' compensation laws).

[12] *Kline v. Berg Drywall, Inc.*, 685 N.W.2d 12 (Minnesota 2004).

[13] E-mail from Mr. Kevin Gregerson to the Author (July 24, 2013).

[14] DAVID I. LEVINE, FRANK W. NEUHAUSER, ET AL., CARVE-OUTS IN WORKERS' COMPENSATION: AN ANALYSIS OF THE EXPERIENCE IN THE CALIFORNIA CONSTRUCTION INDUSTRY (W.E. Upjohn Institute for Employment Research (2002)).

The study, influenced by the 1995 critique summarized above, sought to address, among other things, the criticisms that the California carve-out system "might weaken the legal rights to due process by denying workers access to legal representation and the ability to collect information through discovery or deposition." The authors, throughout, were attentive to this criticism. Of note was the fact that many workers with significant injuries continued to consult with attorneys, even though attorneys were typically not permitted to appear at the mediation proceedings. Workers were, in any event, often confused about their right to legal counsel. In this regard, the authors were critical of stewards who seemed completely unaware of the existence of the carve-out and how it operated. This was not a problem in carve-outs where the authors found sophisticated, pro-active ombudsmen who let workers know that legal representation was permitted.

The authors were impressed that a trained, devoted, and pro-active ombudsman could make a real difference in keeping minor claims from morphing into needless disputes and the involvement of lawyers. The role and experiences of carve-out ombudsmen were exhaustively discussed – and this remains one of the most educational aspects of the text. In general, the authors could not determine that workers were being kept from good medical care by virtue of increased employer control over providers. Similarly, in the most closely-studied carve-out, they could not determine that indemnity payments had decreased. The authors avoided broad conclusions about this possible prejudice to workers, as the study necessarily did not take into effect the costs of long-term disability cases.

A reviewer, writing in 2005, faulted the study because of its failure to utilize, in interviewing workers to evaluate system outcomes, a "control group" of injured workers in the traditional statutory system.[15] Still, the Levine analysis seems to endure as the only book-length treatment of carve-outs.

A New York-based researcher, writing in 2012, reviewed much of the research to date on carve-outs.[16] That research included an ambitious 2001 study and assessment of the New York carve-out law.[17] He also interviewed a number of carve-out "practitioners." He was ultimately persuaded that carve-outs are particularly valuable in the Project Labor Agreement (or "PLA") context, where management and labor arrange, at the outset of a project, for standardized contract terms. These standardized terms, in a *number* of areas, apply for the duration of the project. According to the analyst, "ADR for workers compensation operates within this cooperative framework…. ADR procedures add to a PLA's efficiency by more promptly

---

[15] Timothy P. Schmidle, Book Review of DAVID I. LEVINE, FRANK W. NEUHAUSER, ET AL., CARVE-OUTS IN WORKERS' COMPENSATION: AN ANALYSIS OF THE EXPERIENCE IN THE CALIFORNIA CONSTRUCTION INDUSTRY (W.E. Upjohn Institute for Employment Research (2002)), in 59 INDUSTRIAL & LABOR RELATIONS REVIEW 161 (Oct. 2005).

[16] Fred B. Kotler, *Alternative Dispute Resolution [ADR] for Workers Compensation in Collective Bargaining Agreements: An overview* (Monograph, April 2012), available at http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1043&context=reports.

[17] Robert L. Seeber, Timothy P. Schmidle, & Robert Smith, *An Evaluation of the New York State Workers' Compensation Pilot Program for Alternative Dispute Resolution* (Monograph, 2001) (available on-line).

addressing the needs of injured workers and by contributing to a positive and cooperative work environment."

VI. Court Decisions Involving Carve-Outs

Trial lawyers have had little luck with the courts in seeking to have carve-outs declared invalid. I've already noted that a momentous California decision ratified the constitutionality of the California statute.[18] In a 1997 case, meanwhile, the Florida First District Court of Appeals (1st DCA) rejected a full-frontal attack on a carve-out.[19] The attack was based on the theory that various aspects of the carve-out illicitly diminished entitlement to benefits.[20] The court analyzed the carve-out, but perceived no evidence of true benefit diminishment. It could only reply, ironically, "Identical procedures do not constitute an alternative." The court also held that allegations of various deprivations of due process, and equal protection, such as the right to counsel, were not cognizable. This was so as the act of forming a carve-out did not reflect state action: "Appellant's contentions unfairly lay at the feet of the Legislature what is in fact the product of the collective bargaining process."

A claimant had no more luck in his aggressive 2002 challenge of a carve-out. There, the 1st DCA rejected the proposition that federal law prohibiting a union from limiting the right of a member "to institute an action … in a proceeding before any administrative agency," rendered the CBA and its ADR procedure null and void.[21] The court also rejected the proposition that the union and employer illicitly "bargained away [claimant's] rights under chapter 440." In this regard, while a union may not prospectively waive a right of a member to seek access to a particular forum, that "principle does not apply to … [this] situation …, in that the legislature both established the workers' compensation system and enacted section 440.211 expressly approving the development by employers and unions of alternative systems of resolving compensation disputes." The court added, notably, that claimant's "union did not bargain away his inviolable right to utilize chapter 440; the legislature declared that it is not an inviolable right, and instead permitted the CBA mechanism to provide the only avenue for recovery of compensation benefits."

[18] *Costa v. W.C.A.B.*, 77 Cal.Rptr.2d 289 (California Ct. Appeals 1998).

[19] *Gassner v. Bechtel Constr*., 702 So.2d 548 (Florida 1st DCA 1997).

[20] A provision of every carve-out statute is that the benefits available via the carve-out must be the same as or equivalent to those under the traditional scheme. The 2009 Nevada statute, for example, admonishes, " Nothing in this section: (a) Authorizes any provision of a collective bargaining agreement to reduce the entitlement of an employee to compensation for temporary total disability, temporary partial disability, permanent total disability, permanent partial disability, vocational rehabilitation services or medical treatment fully paid for by the employer …. Any provision of a collective bargaining agreement which purports to so reduce the entitlement of an employee to any such compensation is void." NEV. REV. STAT. ANN. § 616A.466(2)(A).

[21] *Ariston v. Allied Building Crafts*, 825 So.2d 435 (Florida 1st DCA 2002). *See also Ulico Cas. Co. v. Fernandez,* 825 So. 2d 988 (Fla. 1st DCA 2002).

In a 2006 Kentucky case, a claimant complained that the ADR program had violated her due process rights because her attorney was prohibited from directly participating at mediation.[22] That prohibition, claimant alleged, ultimately led to her failure to timely seek arbitration after the failed mediation session. The court reviewed the facts and dismissed this and kindred allegations: "[T]his is not a case in which an inexperienced worker was persuaded by a sophisticated adjuster or employer to agree to unfavorable terms." In a 2007 Kentucky case, meanwhile, the court rejected the proposition that the claimant's medical coverage rights under the carve-out were diminished when compared to that of the traditional scheme.[23]

The one case, seemingly, where a carve-out has encountered trouble, in its limitation of representation, is the 2004 Minnesota case referenced above.[24] There, a carve-out prohibited claimant from having counsel at the facilitation and mediation stages. The Minnesota court was persuaded that such prohibition did indeed constitute a diminishment of an employee's entitlement to benefits. The court stressed, in its analysis, the fact that the workers' compensation program in Minnesota contemplated, from the very outset, injured workers having the benefit of such representation. The court specifically ratified the Moscowitz and Van Bourg proposition that the "workers' compensation system is inherently adversarial."[25]

[22] *Spears v. Carhartt, Inc*., 215 S.W.3d 1 (Kentucky 2006).

[23] *Davis v. Carhartt, Inc*., 2006 Ky. Unpub. LEXIS 454 (Kentucky Ct. App. 2006), *aff' d,* 2007 Ky. Unpub. LEXIS 69 (Kentucky 2007).

[24] *Kline v. Berg Drywall, Inc.*, 685 N.W.2d 12 (Minnesota 2004).

[25] The *Kline* case also held that the mere fact that ADR was found in a collective bargaining agreement did not – as argued by employer – mean that appeals from arbitration adjudications of the same were to be heard in *federal* court.

APPENDIX

NATIONAL ASSOCIATION
OF WORKERS' COMPENSATION JUDICIARY
COMPARATIVE ADJUDICATION SYSTEMS PROJECT

STATUTES, REGULATIONS, AND CASES:
WORKERS' COMPENSATION CARVE-OUTS
AS ALLOWED IN TWELVE STATES

Torrey/Yskamp (07/2013)[*]

State	Year	Statute	Regulation	Proviso, *Review* in WC System?	Case
CA	1993	Labor Code § 3201.5 (for construction)[1]; Labor Code § 3201.7 (other industries).[2]	Cal. Code Regs. tit. 8, § 10865 (providing for "Reconsideration of Arbitration Decisions Made Pursuant To Labor Code Sections 3201.5 and 3201.7.")[3]	Yes	*Costa v. W.C.A.B.*, 77 Cal.Rptr.2d 289 (Cal. Ct. App. 1998) (legislature's creation of carve-outs was not in violation of California constitutional proviso authorizing comp laws).
FL	1993	Fla. Stat. Ann. § 440.211 *Compare* Fla. Stat. Ann. § 440.1926 (addressing JCC ability, on consent, to act as arbitrator).[4]		No	*Gassner v. Bechtel Const.*, 702 So. 2d 548, 552 (Fla. 1st DCA 1997) (rejecting attack on legitimacy of carve-out); *Ariston v. Allied Bldg. Crafts*, 825 So. 2d 435 (Fla. 1st DCA 2002) (rejecting attack on legitimacy of carve-out); *Ulico Cas. Co. v. Fernandez*, 825 So. 2d 988 (Fla. 1st DCA 2002).

[*] Thanks to Mr. James Yskamp (Pitt Law Class of 2014), my research assistant, for his assistance on this project. Corrections or additions welcome: DTorrey@pa.gov.

[1] **California**: http://www.dir.ca.gov/dwc/LC32015.html. *Discussed in:* David I. Levine, Frank W. Neuhauser, & Jeffrey S. Peterson, " *Carve-Outs from the Workers Compensation System*, 21 JOURNAL OF POLICY AND ANALYSIS 467 (2002).

[2] **California**: http://law.onecle.com/california/labor/3201.7.html.

[3] **California**: http://www.dir.ca.gov/t8/10865.html.

[4] **Florida**: http://www.flsenate.gov/Laws/Statutes/2012/440.211; http://www.flsenate.gov/laws/statutes/2012/440.1926. *Discussed at*: 58A Fla. Jur 2d, *Workers' Compensation* § 589.

HA	1995	Hawaii Statutes § 386-3.5[5]	Haw. Code Regs. § 12-10-2[6]	No	
IL	2011	820 Ill. Comp. Stat. Ann. § 305/4b[7]	710 Ill. Comp. Stat. Ann. § 5 (**Note**: Uniform Arbitration Act)	No	
KY	1994	Ky. Rev. Stat. Ann. § 342.277[8]	803 Ky. Admin. Regs. § 25:150[9]	Yes	*Spears v. Carhartt, Inc.,* 215 S.W.3d 1 (Ky. 2006) (carve-out limitation on counsel at mediation did not violate claimant's due process rights); *Davis v. Carhartt, Inc.,* 2007 Ky Unpub. LEXIS 69 (Ky. 2007) (carve-out proviso as to medical opinions did not diminish rights).
MA	1992	Mass. Gen. Laws Ann. ch. 152, § 10C[10]			
MD	1997	Md. Code Ann., Lab. & Empl. § 9-104(d)[11]		Yes[12]	
ME	1993	Me. Rev. Stat. tit. 39-A, § 110[13]		No	

[5] **Hawaii:** http://codes.lp.findlaw.com/histatutes/1/21/386/I/386-3.5.

[6] **Hawaii**: Rule 12-10-2(j), notably, provides, " No compromise in regard to a claim for compensation covered by an approved collective bargaining agreement shall be valid unless it is approved by decision of the director as conforming to chapter 386, HRS, and made a part of the decision." (A similar declaration is not found in California law, though the same type of proviso appears in the Maryland statute. *See infra* note 28.) *See* http://hawaiiworkcomplaw.wikispaces.com/%C2%A712-10-2+Negotiation+for+benefit+coverage.

[7] **Illinois**: http://law.onecle.com/illinois/820ilcs305/4b.html.

[8] **Kentucky**: http://www.lrc.ky.gov/statutes/statute.aspx?id=32462.

[9] **Kentucky**: http://www.comped.net/ad_regs_display.php?ID=1701.

[10] **Massachusetts**: https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXXI/Chapter152/Section10C. *Discussed at* 29 MASS. PRAC., WORKERS' COMPENSATION § 7.18 (3d ed.).

[11] **Maryland**: http://statutes.laws.com/maryland/labor-and-employment/title-9/subtitle-1/9-104. The statute provides, notably, " (2) (i) All settlements and resolutions of claims under an alternative dispute resolution system shall be submitted to the Commission for approval. The Commission shall approve settlements and resolutions of claims that the Commission determines are in compliance with this title."

[12] **Maryland**: The statute provides, notably, that " (2) (ii) All arbitration decisions under an alternative dispute resolution system shall be reviewable in the same manner and under the same procedures as a decision of a commissioner."

MN	1995	Minn. Statutes § 176.1812[14]	Minn. R. 5229.0010-5229.0060[15]	Yes	*Kline v. Berg Drywall*, 685 N.W.2d 12 (Minn. 2004) (fact that ADR was found in CBA did not mean that appeals from arbitration adjudication of same were to be heard in federal court; also, prohibition on employee counsel at early stages of ADR disapproved).
NV	2009	Nev. Rev. Stat. Ann. § 616A.466[16]		No	
NY	1995	N.Y. Workers' Comp. Law § 25(2-c)[17]	Workers' Comp Board Rules and Regs App. §§ 314.1-314.8[18]	No[19]	
PA	1996	Section 450 of the Act, 77 P.S. § 1000.6[20]	34 Pa. Code § 123.401-123.404 [21]	No[22]	

[13] **Maine**: http://www.mainelegislature.org/legis/statutes/39-a/title39-Ach1.pdf.

[14] **Minnesota**: https://www.revisor.mn.gov/statutes/?id=176.1812. *Discussed at*: Linda J. Starr, *Injured on the Job: Using Alternative Dispute Resolution to Improve Workers' Compensation in Minnesota*, 18 HAMLINE J. PUB. L. & POL'Y 487, 498 (1997). *See also* William K. Ecklund, *Collectively Bargained Workers' Compensation* (Monograph 2007), available at http://www.pinp.org/files/lmcc/CBCW_Seminar.pdf.

[15] **Minnesota**: http://www.smarthrmanager.com/book/hr-state-law/minnesota/regulations/department-of-labor-and-industry/chapter-5229-workers-compen.

[16] **Nevada**: http://www.leg.state.nv.us/NRS/NRS-616A.html#NRS616ASec466.

[17] **New York**: http://codes.lp.findlaw.com/nycode/WKC/2/25. *Discussed in* Robert L. Seeber, Timothy P. Schmidle, & Robert Smith, *An Evaluation of the New York State Workers' Compensation Pilot Program for Alternative Dispute Resolution* (Monograph, 2001) (available on-line). *See also* Fred B. Kotler, *Alternative Dispute Resolution [ADR] for Workers Compensation in Collective Bargaining Agreements: An Overview* (Monograph, 2012) (available on-line).

[18] **New York**: http://www.workcompanalysisgroup.com/content.php?id=1177&state=NY&regulation_cat=New%20York%20Rules&sess_state=NY.

[19] **New York**: The statute states, notably, " (d) The determination of an arbitrator or mediator pursuant to an alternative dispute resolution procedure pertaining to the resolution of claims arising under this chapter shall not be reviewable by the workers' compensation board, and the venue for any appeal shall be to a court of competent jurisdiction in accordance with section twenty-three of this chapter."

[20] **Pennsylvania**: http://www.portal.state.pa.us/portal/server.pt?open=514&objID=553007&mode=2. *Discussed at* DAVID B. TORREY & ANDREW E. GREENBERG, PA WORKERS' COMPENSATION: LAW & PRACTICE, § 16:112 *et seq.* (Thomson Reuters 3rd 3d. 2008).

[21] **Pennsylvania**: http://www.pacode.com/secure/data/034/chapter123/subchapEtoc.html.

[22] **Pennsylvania:** The regulation states, notably, " § 123.404. *Effect and appeal of ADR final determinations*. (a) Final determinations rendered under an ADR system are binding and enforceable. (b) Appeals from determinations rendered under an ADR system are limited to those made under the conditions specified by 42 Pa.C.S. § 7314 (relating to vacating award by court)."