

## Forums for a Future <sup>i</sup>

### Podcast # 29: Stop Loss Wall Street

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When the financial crisis and recession of 2008-2009 hit, workers lost their jobs; and, union contracts, health benefits and retirement plans became worthless legal agreements through bankruptcy proceedings. It was not surprising, therefore, that there was public outrage over AIG types of retention contracts, golden handshakes and excessive executive pay for those in the financial sector, many of who were responsible for the crisis in the first place.

Wall Street made the case that these executive payouts had to be honored because of prior written contractual agreements. But that conclusion is too simple.

If the requirement to honor all contracts was that straightforward, then there should have been public outcry against the use of Stop Loss by the military. Stop Loss is the current procedure through which more than 60,000 troops have had their enlistment contracts extended, *without their consent*, for additional tours of duty in Iraq and Afghanistan.

In the US, the legal doctrine for contracts allows contracts to be voided under specific conditions. Such as bankruptcy – which has cost workers their earned benefits -- or when the contract is unfairly exploitive due to the *status* of the parties, or where the *context* is incompatible with fundamental principles of social justice. For example, an adult cannot sign a legally binding contract with a minor. Such an agreement is unfair and unjust, by definition, due to the differential authority and capacity for understanding the consequences, between an adult and a child.

So, what makes it appropriate for the United States government to break the enlistment contracts with our soldiers, for the national security of the country, but not break the lucrative financial payouts to corporate executives, for the financial security of the country?

Specifically, what is the *status* of the parties and the relevant *context* in each of these situations?

#### #1 the Status of Parties

The AIG type of retention contracts, golden handshakes and executive compensation packages were usually detailed and complex documents constructed by finance lawyers accustomed to technical legal negotiations, and who were all members of an elite corporate inner circle. For example, the AIG contract was 15 pages of legalese.

In contrast, the enlistment contract is a simple three-page nonnegotiable form marketed by military recruitment specialists, largely to young men who are inexperienced in legal details, and who are often seeking an escape from difficult social circumstances and/or poor employment prospects.

## #2 the Context

Wall Street Corporations, with little legal scrutiny, often accepted the contracts without evaluating them according to a pre-established corporate standard designed to protect the legitimate interests of other financial stakeholders. In short, many of the agreements appear to be a form of corporate collusion through negligence.

In contrast, the military enlistment contracts can be seen, and have been challenged, as carefully constructed forms which mislead young men by not fully disclosing, in the *single* page of information included in the form, the real implications of the terms of the agreement to enlist in a voluntary army.

## Questions Raised

From the perspective of legal contract doctrine, these two considerations of *status* and *context* suggest that what should be happening is the exact opposite of what is happening. Specifically: (1) voluntary retention contracts or benefits should be offered to our military personnel and to victimized employees, and (2) the self-serving Wall Street agreements and the Presidential authority for Stop-Loss should be voided.

These two outcomes deserve a full public discussion in terms of the legal doctrine that contracts may be broken or altered *only* when they are unfairly exploitive or incompatible with fundamental principles of social justice.

## Summary

In sum: Our service men and women should be able to either decline Stop Loss or accept a retention contract. And, the Executive Payout Agreements of failed institutions should be rendered worthless, similar to the union contracts negated through bankruptcy proceedings.

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<sup>i</sup> This essay is based on an audio and video podcast by Professor Renner entitled “**Forums for a Future**”. Text, audio and video copies of the material may be accessed from his website at [www.kerenner.com](http://www.kerenner.com). The direct link for subscribing to the video series from iTunes is:

<http://phobos.apple.com/WebObjects/MZStore.woa/wa/viewPodcast?id=289289719>

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[https://my.usf.edu/webapps/lobj-podcast-bb\\_bb60/feed/IDH3400.004S09/podcast.xml](https://my.usf.edu/webapps/lobj-podcast-bb_bb60/feed/IDH3400.004S09/podcast.xml)