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in the **NEWS**

## Former Janus Manager Awarded \$4.8M

### Breach Of Contract Could Lead To Additional Suits

By Peter Rossi  
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DENVER — The 19th century American author Elbert Hubbard once advised, “Your neighbor is the man who needs you.” That couldn’t be more true — and literal — in the case of *Edward Keely v. Janus Management Holdings Corp.*

Glen Summers, a partner at Bartlit Beck Herman Palenchar & Scott LLP, successfully represented plaintiff Keely over breach of contract and fraud claims in the case, heard in Denver District Court. All told, the jury awarded \$4.8 million to Keely in the case, which could swell to \$7 million with interest and attorney’s fees.

But Summers says he wasn’t just representing a client (in fact, the case is much smaller than the firm usually handles): As the attorney describes it, he was also helping out a friend and neighbor.

Summers and Keely live near each other in the Castle Pines neighborhood south of Denver.

“We felt very strongly about the case,” Summers said. “We wanted to make sure Ed (Keely) got a good result, so we agreed to do it, and are very glad we did.”

#### Broken promises and the e-mail trail

From 1998 to 2007, Keely was a portfolio manager for Janus, responsible for managing huge



PHOTO COURTESY OF GLEN SUMMERS

**Glen Summers, of Bartlit Beck Herman Palenchar & Scott, LLP, says additional claims may be brought against Janus.**

money accounts. After he left the company two years ago, Keely approached Summers with his claims against Janus — the main one focusing on CEO Gary Black, who had promised all the

portfolio managers equal pay and benefits by way of a 2004 e-mail.

Specifically, Black informed managers that their pay scale would be adjusted, as Janus was looking to cut costs. Black

promised that if any of the 16 Denver-based portfolio managers negotiated additional protections, then they would extend those same protections to the rest of the managers.

“First, we are not going to give special protection to some and not others,” Black wrote. “If we agree to add-on protection for one portfolio manager, everyone gets that protection.”

Later, however, company executives secretly struck a deal with Scott Schoelzel, who managed the lucrative Janus Twenty Fund, the largest fund in the company. Under Schoelzel’s contract, he was promised more than \$37 million over 12 years: In addition he received better severance protections than the other portfolio managers, making it strikingly different than the other managers’ contracts. The contract specifically included the cause that all information must remain confidential, and that sharing the terms would result in it becoming null and void.

Yet in 2006, another former portfolio manager, Min Young Sohn, learned of the disparity in the contracts, when he was asked to analyze the company’s earnings. Janus’ investment officers confirmed that the pay scales were indeed different. After Keely learned that the contracts were not what had been promised, he sought out Summers’ advice. The lawsuit was filed on July 25, 2007 – and, ultimately, Black’s e-mailed promise ultimately came back to hurt Janus with a vengeance.

#### ‘Very effective witnesses’

In addition to Sohn, Summers brought in another former portfolio manager, Tom Malley, to testify. The two witnesses, he said, proved crucial in painting a picture in jury members’ minds of the wrongdoing.

Malley and Sohn testified on how the company changed the compensation method and breached the contract by giving Schoelzel a more lucrative deal than the other managers received.

Specifically, the two witnesses noted how all portfolio managers would be under one-year initial term contracts that automatically renewed each year. Schoelzel was given a three-year initial term contract.

“These were guys who were absolutely dedicated to the company and just felt the company had acted in a way that was awful,” Summers said. “They were very, very effective witnesses.”

The clincher came courtesy of another Janus employee, Ron Sachs — who is still with the company and is currently the portfolio manager of the Janus Twenty Fund.

On the witness stand, Sachs acknowledged that the portfolio managers were not compensated equally: His testimony was especially powerful because he is a current employee managing the largest fund, Summers noted.

“[Sachs] had a lot to lose pro-

viding that testimony,” Summers said. “This is a guy who’s highly compensated running a very important fund, and he’s in a situation where Janus could conceivably retaliate against him professionally. Yet, he gave very straightforward testimony that they had lied and violated the contract.”

#### Between a rock and a hard place

The biggest issue that could result from the ruling is the precedent set for former portfolio managers, who may also be compelled to bring legal action against Janus. Keely’s case highlighted that 17 portfolio managers have left the company since 2006, when Black became CEO and started the new pay scale.

It’s unclear whether Janus will appeal. Ed Aro of Hogan & Hartson represented Janus. Reached by telephone, Aro told *Law Week Colorado* that he is not authorized to speak publicly on the case. Janus spokesman Shelley Peterson did not return a call to *Law Week* by press time.

But if Janus continues to fight, the company could find itself in a tough situation, due to the realities of collateral *estoppel*, which occurs once a court has decided an issue of law necessary to its judgment. That decision can preclude further litigation of the issue in a suit on a different cause involving a party to the first case.

“If they appeal, and the Court of Appeals rules against them on the contract, well then they’ve just handed the claims to the other portfolio managers on a silver platter,” Summers said.

The former portfolio managers could be interpreted as parties of the first case, and indeed Malley — one of the key witnesses — has also filed a lawsuit against Janus alleging virtually the same claims.

Others could come forward after learning of the successful outcome in Keely’s case. Malley’s lawyer is David Seserman, who has a private practice in Denver. Seserman also represents Sohn.

“There’s a lot of reasons why they might be wise not to appeal this case,” Summers said.

Currently, Summers is working on getting an enhancement over the Wage Act, which Janus was found to have violated. With attorney’s fees and interest, he said the total award for his client should end up being around \$7 million.

But Summers is also content to have helped vindicate his neighbor.

“It really wasn’t about the money for Ed (Keely),” Summers said. “It was about what he felt was right or wrong and about being treated fairly and with integrity, and he really felt that he was manipulated and deceived by the company.”