

Opinions of the Colorado Supreme Court are available to the public and can be accessed through the Judicial Branch's homepage at <http://www.courts.state.co.us>. Opinions are also posted on the Colorado Bar Association's homepage at <http://www.cobar.org>.

ADVANCE SHEET HEADNOTE

June 27, 2022

2022 CO 36

No. 20SC595, *Chan v. HEI Resources, Inc.* – Securities – Colorado Securities Act – Investment Contracts – General Partnerships.

This case requires the supreme court to determine how courts should evaluate whether an interest in a “general partnership” is an “investment contract” for purposes of the Colorado Securities Act, §§ 11-51-101 to -1008, C.R.S. (2021) (the “CSA”). General partnerships ordinarily are not investment contracts because general partners control and direct the venture, but in certain circumstances, a venture denominated a general partnership may be an investment contract in operation.

The court now adopts the generally accepted framework from *Williamson v. Tucker*, 645 F.2d 404 (5th Cir. 1981), for how to assess whether a general partnership is in fact an investment contract. Reversing the division below, the court concludes that the CSA does not allow for a “strong presumption” that general partnership interests are not securities – or for any presumption or burden

beyond that necessarily created by the plaintiff's burden of proof. The supreme court further concludes that (1) a court evaluating whether general partners lack the ability to direct the venture may find that their general business knowledge and expertise is sufficient to permit them to exercise their partnership powers, (2) if general partners themselves would not be able to serve in the place of the manager, that does not necessarily make the partnership an investment contract, and (3) a particular venture's "economic realities" can appropriately be considered as part of the *Williamson* framework. Accordingly, the supreme court reverses the court of appeals' judgment on the question of whether courts should apply a "strong presumption" and remands the case to the trial court for further findings.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2022 CO 36

Supreme Court Case No. 20SC595
Certiorari to the Colorado Court of Appeals
Court of Appeals Case No. 18CA1769

Petitioner:

Tung Chan, Securities Commissioner for the State of Colorado,

v.

Respondents:

HEI Resources, Inc. f/k/a Heartland Energy, Inc.; Charles Reed Cagle; Brandon Davis; Heartland Energy Development Corporation; John Schiffner; and James Pollak.

Judgment Affirmed in Part and Reversed in Part

en banc

June 27, 2022

Attorneys for Petitioner:

Philip J. Weiser, Attorney General

Robert W. Finke, First Assistant Attorney General

Jodanna L. Haskins, Senior Assistant Attorney General

Janna K. Fischer, Assistant Attorney General

Denver, Colorado

**Attorneys for Respondents Heartland Energy Development Corporation and
Brandon Davis:**

Munck Wilson Mandala LLP

Shain A. Khoshbin

S. Wallace Dunwoody

Chase A. Cobern

Also available as part of the eCourse

[Unincorporated Interests as Securities Under Federal and State Law](#)

First appeared as part of the conference materials for the
32nd Annual LLCs, LPs and Partnerships session

"Unincorporated Interests as Securities Under Federal Law and State Law"