

## Corporate & Financial Weekly Digest

Posted at 12:55 PM on August 13, 2010 by [Julie Pechersky](#)

### Manager's Investment in LLC Not an Investment Contract

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The managing partner of a mining venture cannot pursue federal securities claims against his estranged partners because he exerted substantial control over the enterprise.

Marc Nunez formed Sand Specialties and Aggregates, LLC (SSA) with five other partners, four of whom promised to commit \$800,000 to the project. Mr. Nunez oversaw certain financial operations of SSA while an operational partner, who was not an investor, handled SSA's mining activities. When the other four investors failed to contribute their share of the funds, disclosed that they could not fulfill this obligation, and began to utilize SSA property for their own benefit, Mr. Nunez sued them and SSA for securities fraud under the Securities Exchange Act of 1934.

The defendants sought dismissal of the securities claim, arguing that Mr. Nunez's financial contribution to SSA could not be considered an investment contract because he exercised substantial control over the business. Mr. Nunez contended that he was induced into purchasing an interest in SSA by promises of like contribution, and that his reliance on the expertise of the operational partner showed that he qualified as a passive investor under the Exchange Act. The U.S. District Court for the Eastern District of Louisiana ruled that Mr. Nunez's control over SSA's finances ensured that he could protect his financial interests in the company, thus his contribution could not be considered an investment contract under federal law. (*Nunez v. Robin*, 2010 WL 3021618 (E.D. La. July 29, 2010))

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