EXHIBIT 4

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

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By virtue of the authority vested in me by the Archivist of the United States, I certify on his behalf, under the seal of the National Archives and Records Administration, that the attached reproduction(s) is a true and correct copy of documents in his custody.

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

PETRO-VENTURES, INC., a corporation, Plaintiff/Appellant, v. GARY G. TAKESSIAN, Defendant/Appellee. STEPHEN R. VRABLE, N. RUSSELL WALDEN and WAYNE HAMERSLY, Intervenors/Appellees.	Docket Number: CIV-90-55349

REPLY BRIEF OF APPELLANT

Benjamin T. Willey, Jr.
WILLEY & SHOEMAKER
501 N.W. Expressway, Suite 525
Oklahoma City, Oklahoma 73118
(405)848-1951

ATTORNEY FOR PLAINTIFF/APPELLANT

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Benjamin T. Willey, Jr.
WILLEY & SHOEMAKER
501 N.W. Expressway, Suite 525
Oklahoma City, Oklahoma 73118
(405)848-1951

ATTORNEY FOR PLAINTIFF/APPELLANT

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UNITED STATES COURT OF APPEALS

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ISSUE PRESENTED FOR REVIEW

Were Plaintiff's unknown claims pursuant to federal securities laws released or waived by Plaintiff's execution of a written release that allegedly released all claims, known or unknown, that may have arisen from a prior transaction?

UNITED STATES COURT OF APPEALS

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STANDARD OF REVIEW

The standard of review set forth in the briefs of the Appellee, Gary G. Takessian, and the Appellees, Stephen R. Vrable, N. Russell Walden and Wayne Hamersly, insofar as they set forth the standard as being a "clearly erroneous" finding on the part of the Court below are accurate representations of the law.

However, it must be noted that the basic standard is whether or not the trial court erred in holding that as a matter of law, unknown federal securities law claims may be released.

Also, the question arises as to whether or not the trial court abused its discretion in not ruling that the issue of intent is a proper question of fact to be tried by the jury.

UNITED STATES COURT OF APPEALS

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PETRO-VENTURES, INC., a corporation, Plaintiff/Appellant, v. GARY G. TAKESSIAN, Defendant/Appellee. STEPHEN R. VRABLE, N. RUSSELL WALDEN and WAYNE HAMERSLY, Intervenors.	)	Docket Number: CIV-90-55349

REPLY BRIEF OF APPELLANT

STATEMENT OF THE CASE

On or about May 15, 1990, the Plaintiff/Appellant, Petro-Ventures, Inc., filed its Brief herein. On or about June 13, 1990, the Defendant/Appellee, Gary G. Takessian, filed his brief herein. On or about June 14, 1990, the Intervenors/Appellees, Stephen R. Vrable, N. Russell Walden and Wayne Hamersly, filed their briefs in this case.

The factual statements of the case set forth by the Defendant/Appellee, Gary G. Takessian and the Intervenors/ Appellees, Stephen R. Vrable, N. Russell Walden and Wayne Hamersly, are accurate insofar as they state the chronology of events leading up to this appeal. Both briefs are inaccurate, however insofar as they state that there was any intent to release federal securities law claims.

At pages A-20 through A-23 of the Plaintiff/Appellant's brief appeared the declaration of B. Keaton Cudd, III, stating that he had no knowledge of any claims pursuant to the securities laws of the United States at the time of the settlement of the prior litigation.

There is no evidence that the negotiations which the Intervenors/Appellees characterize on Page 4, line 7 of their brief as "comprehensive" ever touched upon issues of known securities law claims, much less unknown claims.

ARGUEMENT IN REPLY TO BRIEF OF INTERVENORS/APPELLEES

On page 4 of their brief, the Intervenors/Appellees set forth paragraph 9 of the settlement agreement of May 29, 1987, for the proposition that it evidenced an intent to release the Plaintiff/Appellant's unknown securities law claims. In fact, the release was limited to claims, damages, etc.

> "...based upon the negotiations for sale and the conveyance of the producing oil and gas properties...."

None of the Intervenors/Appellees have addressed the issue of the clear intent of the settlement agreement expressed on page 3 which states:

> "3. PVI, CUDD, GAP, GAR, NEEDCO and Takessian desire to and in fact have settled all claims arising out of the transaction described above and asserted in the litigation described above." (Emphasis Added).

It is clear from this separate expression of intent that there was no intent to settle or release unknown claims.

Indeed the Plaintiff/Appellant would suggest to the Court that it is virtually impossible to ascertain that a party intended to release an unknown claim. By its very nature, no one can judge what effect an unknown claim would have upon a party's willingness to enter into an agreement. This is doubtless one of the considerations in this Court's well reasoned decisions in the cases of Royal Air Properties, Inc., v. Smith (9th Cir. 1964), 333 F.2d 568 and Burgess v. Premier Corp., (9th Cir. 1984), 727 F.2d 826.

At page 6 of their brief, the Intervenors/Appellees state that the Plaintiff/Appellant has made an inaccurate statement and a faulty assumption as to the law. This is simply not true, and is an effort by the Intervenors/Appellees to breathe life into a non-issue. The simple fact is, as all parties agree, federal law controls the issues now before the Court. This Court has clearly stated that there can be no release of unknown federal securities law claims.

It should be noted again that the prior litigation was originally brought in San Diego Superior Court by GAP and GAR to assert only state law claims.

Simply put, the Court below did not follow the law of the 9th Circuit. There can be no release of unknown federal securities law claims.

The case of Finn v. Prudential Bache Securities, Inc., (11th Cir. 1987) 821 F.2d 581 cited by the Intervenors/Appellees on

page 6 of their brief bears little or no resemblance to the case at bar. In that case there was a specific release of known claims, not all of which related to federal securities laws. In fact, in the Finn case the court held that there were triable issues of fact relating to the release and reversed and remanded the case in part. Additionally, in a lengthy dissent, the Senior Circuit Judge noted that he would have reversed and remanded on additional issues.

The case of Pettinelli v. Danzig (11th Cir. 1984) 722 F.2d 706 cited by the Intervenors/Appellees on page 6 of their brief also deals with a release of known claims. It is also useful to note that the Intervenors/Appellees have had to go all the way to the 11th Circuit to find any cases that lend the least amount of support to any principle they cite.

The case, In re U.S. Financial Securities Litigation, (1984) 729 F.2d 628, cited by all of the Appellees, clearly stands for the proposition that when the issue in question is a matter of law, the appellate court may freely review the lower court's decisions.

On page 8 of their brief, the Intervenors/Appellees make a blatent misstatement of law and of fact. They cite the case of Locafrance U.S. Corp. v. Intermodal Systems Leas. (2nd Cir. 1977) 558 F.2d 1113, and state that the case is "precisely on point with the case at bar." Locafrance is not on point.

Most important is the fact that the case is from the 2nd Circuit which has applied a reasonable inquiry test to releases of unknown federal securities law claims. Also, there is nothing in the court's opinion in Locafrance to indicate that it dealt with the release of unknown claims. This is such an important

issue that it surely would have been addressed if such matters were before the Locafrance court.

Both Defendant/Appellee and Intervenors/Appellees make much of the fact that the parties to this case were in the midst of "contentious litigation" when the release was executed. In fact, as stated in Appellant's brief filed herein, the parties were in the very early stages of litigation with only minimal discovery having been undertaken.

The Intervenors/Appellees' attempt to distinguish the Burgess and Royal Air Properties cases at pages 12 and 13 of their brief. This Court has clearly set forth its intent that there may be no release of unknown securities law claims in the 9th Circuit. The Plaintiff/Appellant respectfully suggests that it should be entitled to rely upon such clear statements of the law.

ARGUMENT IN REPLY TO BRIEF OF DEFENDANT/APPELLEE

At pages 1 and 2 of its brief, the Defendant/Appellee raises for the first time the issue of whether there should have been some sort of inquiry by the Plaintiff/Appellant as to its federal securities law claims. This argument must fail for three reasons.

First of all, the issue of inquiry notice was not raised as an issue in the Court below and may not be considered for the first time on appeal.

Secondly, the Defendant/Appellee cites no cases in support of this argument.

Finally, even a cursory review of the law of the Ninth Circuit and in particular the cases cited by all of the parties to this appeal would have demonstrated to the Defendant/Appellee that the 9th Circuit has rejected any "inquiry notice" or reasonable inquiry standard.

The Defendant/Appellee's reliance upon California law and the Locafrance case is misplaced for the same reasons set forth in the portion of this brief in reply to the argument of the Intervenors/Appellees.

Finally, as did the Intervenors/Appellees, the Defendant/Appellee seeks to distinguish the Burgess and Royal Air cases and to make much of the fact that those cases did not involve settlements that resulted from litigation in which counsel was involved.

Once again, the Defendant/Appellee ignores the fact that the settlement in question was entered into in the early stages of litigation before any discovery was undertaken other than review of certain files relating only to the producing wells that were the subject of the sale.

There is no evidence that the settlements and invalid releases in the Burgess and Royal Air cases were not extensively negotiated by counsel. As a matter of fact due to the nature of the claims in those cases and the fact, that the dealings involved extended over a long period of time, it is rather more than less likely that counsel were involved in all stages of the proceedings.

A careful consideration of Burgess and Royal Air Properties would then tend to indicate more similarities than differences

between those cases and the case at bar. Involvement or non-involvement of counsel is, in fact, not an issue. The only consideration that arises from the existence of litigation and the involvement of counsel would be some sort of inquiry and this requirement has been rejected by the 9th Circuit.

CONCLUSION

The Intervenors/Appellees would have this Court believe that by ruling in favor of the Plaintiff/Appellant in this case that the purposes of settlement would be undermined. In fact, by not ruling in favor of the Plaintiff/Appellant, the Court will undermine the clear provisions of non-release set forth in federal securities laws and the well settled law of this Circuit regarding non-release of unknown federal securities law claims.

As stated above, the matter of pending litigation and involvement of counsel are simply non-issues. It is likely that there was equal or greater involvement of counsel in the negotiations in the Burgess and Royal Air Properties than in the case at bar. In any event, the statements of the law in the Burgess and Royal Air Properties cases, supra are clear and the cases are on point and controlling of the issues in the case at bar.

The Plaintiff/Appellant would pray that this Court review and remand this case for further proceedings in the Court below.

The Plaintiff/Appellant further prays for its attorney fees and the costs of this action.

Respectfully submitted,
WILLEY & SHOEMAKER

By: _____
Benjamin T. Willey, Jr.
OBA No. 9631
501 N.W. Expressway, #525
Oklahoma City, Oklahoma 73118
(405)848-1951

CERTIFICATE OF SERVICE

I certify that on this 28th day of June, 1990, I mailed, with postage prepaid thereon, a copy of the above and foregoing Reply Brief of Appellant in the above referenced case to:

John S. Einhorn, Attorney
for Gary G. Takessian
401 West "A" Street
San Diego, California 92101

Charles H. Brock, Attorney for
Wayne Hamersly, Stephen R. Vrable,
and N. Russell Walden
Hoge, Fenton, Jones & Appel, Inc.
60 South Market Street
SAn Jose, California 95113-2396

_____
Benjamin T. Willey, Jr.