

Descendants of Tame Doe

Generation No. 1

1. TAME² DOE (*MOYTOY*¹) was born Abt. 1705, and died Abt. 1760. She married SKAYAGUSTUEGWO.

More About TAME DOE:

Indian Heritage: WOLF CLAN

Children of TAME DOE and SKAYAGUSTUEGWO are:

2. i. NANYE'HI OR NANCY (*THE*³ *GHIGUA*), b. 1738, CHOTA, CITY OF REFUGE, CHEORKEE NATION, NORTH CAROLINA; d. 1824, WOMAN KILLER FORD, OCOWEE RIVER, EASTERN CHEROKEE NATION.
- ii. LONGFELLOW.

Generation No. 2

2. NANYE'HI OR NANCY (*THE*³ *GHIGUA*) (*TAME*² *DOE*, *MOYTOY*¹) was born 1738 in CHOTA, CITY OF REFUGE, CHEORKEE NATION, NORTH CAROLINA, and died 1824 in WOMAN KILLER FORD, OCOWEE RIVER, EASTERN CHEROKEE NATION. She married TSU-LA KINGFISHER in CHEORKEE NATION, TENNESSEE. He was born Abt. 1720 in CHEORKEE NATION, TENNESSEE, and died 1755 in CANTON COUNTY, GEORGIA.

More About TSU-LA KINGFISHER:

Indian Heritage: DEER CLAN--FULL BLOOD CHEORKEE

Children of NANYE'HI GHIGUA) and TSU-LA KINGFISHER are:

3. i. CATHERINE⁴ KINGFISHER, b. Abt. 1752, CHEORKEE NATION, TENNESSEE; d. 1817, CHEORKEE NATION, TENNESSEE.
- ii. FIVEKILLER LITTLE FELLOW KINGFISHER.

Generation No. 3

3. CATHERINE⁴ KINGFISHER (*NANYE'HI OR NANCY (THE*³ *GHIGUA*), *TAME*² *DOE*, *MOYTOY*¹) was born Abt. 1752 in CHEORKEE NATION, TENNESSEE, and died 1817 in CHEORKEE NATION, TENNESSEE. She married (1) ELLIS HARLAN, son of EZEKIEL HARLAN and HANNAH OSBORN. He was born 1731 in CHESTER COUNTY, PENNSYLVANIA, and died 1819 in McMINN COUNTY, TENNESSEE, UNITED STATES. She married (3) SAMUEL I CANDY Abt. 1767. She married (4) JOHN I WALKER Abt. 1770.

Children of CATHERINE KINGFISHER and ELLIS HARLAN are:

4. i. EZEKIEL⁵ HARLAN.
5. ii. NANCY (NANNY) HARLAN.
6. iii. ELIZABETH HARLAN, b. August 15, 1793.

Child of CATHERINE KINGFISHER is:

7. iv. PENELOPE⁵ MAYFIELD.

Child of CATHERINE KINGFISHER and SAMUEL CANDY is:

8. v. SAMUEL II⁵ CANDY, b. Abt. 1768; d. July 06, 1837.

Children of CATHERINE KINGFISHER and JOHN WALKER are:

9. vi. JENNIE⁵ WALKER, b. Bet. 1771 - 1772, CHEORKEE NATION, TENNESSEE; d. CHEORKEE NATION, INDIAN TERRITORY, OKLAHOMA.

Generation No. 4

4. EZEKIEL⁵ HARLAN (*CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) He married HANNAH LEWIS.

Child of EZEKIEL HARLAN and HANNAH LEWIS is:

10. i. DAVID M.⁶ HARLAN.

5. NANCY (NANNY)⁵ HARLAN (*CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) She married CALEB STARR, son of ALEXANDER STARR and DEBORAH BRYANT.

Child of NANCY HARLAN and CALEB STARR is:

11. i. JAMES I⁶ STARR.

6. ELIZABETH⁵ HARLAN (*CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born August 15, 1793. She married PETER HILDEBRAND, son of JOHN I HILDEBRAND. He was born May 10, 1782 in GERMANY, and died December 11, 1851 in CHEORKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES.

Children of ELIZABETH HARLAN and PETER HILDEBRAND are:

12. i. CATHERINE⁶ HILDEBRAND, b. December 15, 1815; d. June 05, 1848.

13. ii. BARBARA HILDEBRAND, b. April 10, 1809.

7. PENELOPE⁵ MAYFIELD (*CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) She married JOHN THOMPSON ADAIR, son of WALTER ADAIR and RACHEL THOMPSON. He was born December 22, 1812 in HABERSHAM COUNTY, GEORGIA, UNITED STATES.

Children of PENELOPE MAYFIELD and JOHN ADAIR are:

14. i. OSCAR FITZALAND⁶ ADAIR, JUDGE, b. March 08, 1848, FLINT DISTRICT, CHEROKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES; d. March 21, 1923.

ii. EDWARD EVERETT ADAIR, b. April 15, 1853; m. RACHEL LOVENIA TWIST, June 29, 1879; b. May 25, 1859; d. 1906.

iii. JOHN HARRELL ADAIR, b. Abt. 1851; d. 1902; m. EMMA CHOATE, 1880.

iv. SAMUEL HOUSTON ADAIR, b. March 01, 1859; d. February 07, 1950; m. SARAH STAPLER ROSS, December 23, 1881; b. 1865; d. 1902.

v. SARAH RUTH ADAIR.

vi. JESSE MAYFIELD ADAIR, b. November 28, 1841; d. January 12, 1864.

8. SAMUEL II⁵ CANDY (*CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born Abt. 1768, and died July 06, 1837. He married ELIZABETH WEST.

More About SAMUEL II CANDY:

Census: 1835, CANDY'S CREEK, McMINN COUNTY, TENNESSEE, UNITED STATES

Indian Heritage: WOLF CLAN--Nanye'hi

Child of SAMUEL CANDY and ELIZABETH WEST is:

i. OLLIE⁶ CANDY, b. Abt. 1794; d. Abt. 1851; m. HAIR CONRAD; b. Abt. 1794; d. November 02, 1844, CHEORKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES.

9. JENNIE⁵ WALKER (*CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born Bet. 1771 - 1772 in CHEORKEE NATION, TENNESSEE, and died in CHEORKEE NATION, INDIAN TERRITORY, OKLAHOMA. She married (1) THOMAS I FOX TAYLOR. He was born Abt. 1763 in CHARLESTON, BRADLEY COUNTY, TENNESSEE. She married (2) JOHN MCINTOSH.

Children of JENNIE WALKER and THOMAS TAYLOR are:

15. i. RICHARD⁶ TAYLOR, b. February 10, 1786; d. June 15, 1853.
- ii. THOMAS II FOX TAYLOR.
- iii. SUSAN OR SUSANNAH TAYLOR.

Child of JENNIE WALKER and JOHN MCINTOSH is:

- iv. NELLIE⁶ MCINTOSH.

Generation No. 5

10. DAVID M.⁶ HARLAN (*EZEKIEL⁵, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) He married JULIANN TUCKER.

Children of DAVID HARLAN and JULIANN TUCKER are:

- i. ELIZA CANNON⁷ HARLAN, b. December 10, 1860; d. December 15, 1895; m. HARDEN HENRY TROTT, Abt. 1873, VINITA, CHEROKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES; b. March 23, 1853, CHEROKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES.

Notes for HARDEN HENRY TROTT:

Harlan, Andrew O. Interview OKGenWeb

Harden TROTT, who married my sister, had a dummy buried in the mud where the present site of the First National Bank now stands. All you could see of the dummy was the man's head sticking out of the mud, making it appear that the man had mired in the mud up to his neck. Hogs ran loose on the streets and were a nuisance around farm wagons, where they would pick up the feed where horses were fed. A merchant could not put out any advertisements, such as flour and feed, for the hogs would come right up on the sidewalk and tear open the sacks and help themselves. Watermelons were thrown in the streets for the hogs, and the streets were not pleasant to look at.

- ii. DAVID HARLAN.
- iii. GEORGE WASHINGTON HARLAN.
- iv. LUCINDA ANN HARLAN.
- v. EZEKIEL NAPOLEAN HARLAN, m. SARAH EVALINE BLYTHE.
16. vi. ANDREW O. HARLAN, b. June 04, 1868.

11. JAMES I⁶ STARR (*NANCY (NANNY)⁵ HARLAN, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) He married NELLIE MAUGH.

Child of JAMES STARR and NELLIE MAUGH is:

- i. LUCY⁷ STARR, m. (1) GEORGE WASHINGTON ADAIR; m. (2) WILLIAM RUSSELL.

12. CATHERINE⁶ HILDEBRAND (*ELIZABETH⁵ HARLAN, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born December 15, 1815, and died June 05, 1848. She married LEVIE BAILEY January 01, 1835. He was born in CHEROKEE NATION, GEORGIA, UNITED STATES, and died July 15, 1843 in CHEROKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES.

Child of CATHERINE HILDEBRAND and LEVIE BAILEY is:

17. i. ELAN⁷ BAILEY, b. 1840, DELAWARE DISTRICT, CHEROKEE NATION, OKLAHOMA, UNITED

STATES; d. December 1878, INDIAN TERRITORY, OKLAHOMA, UNITED STATES.

13. BARBARA⁶ HILDEBRAND (*ELIZABETH⁵ HARLAN, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born April 10, 1809. She married HIRAM LINDER.

Child of BARBARA HILDEBRAND and HIRAM LINDER is:

- i. ANN ELIZA⁷ LINDER, b. February 16, 1838, ILLINOIS, UNITED STATES; m. WILLIAM H. HENDRICKS, March 28, 1864; b. February 28, 1831, GEORGIA, UNITED STATES.

14. OSCAR FITZALAND⁶ ADAIR, JUDGE (*PENELOPE⁵ MAYFIELD, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born March 08, 1848 in FLINT DISTRICT, CHEROKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES, and died March 21, 1923. He married MARY CATHERINE RIDER February 03, 1875. She was born April 20, 1857 in GOINGSNAKE, CHEROKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES, and died January 14, 1914 in SALLISAW, SEQUOYAH COUNTY, OKLAHOMA, UNITED STATES.

Children of OSCAR ADAIR and MARY RIDER are:

- i. JOHN LAFAYETTE⁷ ADAIR, b. November 03, 1885.
- ii. WILLIAM PENN ADAIR, b. January 27, 1880.
- iii. MARY LOUVENIA ADAIR, b. December 19, 1875.
- iv. WINONAH ADAIR, b. March 08, 1878.
- v. SARAH RUTH ADAIR, b. September 09, 1881; d. 1965.
- vi. ROSA ADA ADAIR, b. March 04, 1890.
- vii. WATHALL CORRIGAN ADAIR, b. February 12, 1896.

15. RICHARD⁶ TAYLOR (*JENNIE⁵ WALKER, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born February 10, 1786, and died June 15, 1853. He married ELLEN MCDANIEL.

Children of RICHARD TAYLOR and ELLEN MCDANIEL are:

- i. LT. COL. THOMS FOX⁷ TAYLOR, b. CHEORKEE COUNTY, TENNESSEE, UNITED STATES; m. NANNIE BUFFINGTON; b. 1812, CHEORKEE COUNTY, TENNESSEE, UNITED STATES.
- ii. ELIZABETH TAYLOR.
- iii. SAMUEL MCDANIEL TAYLOR.

Generation No. 6

16. ANDREW O.⁷ HARLAN (*DAVID M.⁶, EZEKIEL⁵, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born June 04, 1868. He married PEARL RICHARDS 1890.

More About ANDREW O. HARLAN:

Indian Heritage: CHEROKEE BY BLOOD

Children of ANDREW HARLAN and PEARL RICHARDS are:

- i. MYRTLE⁸ HARLAN.
- ii. NINA HARLAN.
- iii. NORVAL HARLAN.

17. ELAN⁷ BAILEY (*CATHERINE⁶ HILDEBRAND, ELIZABETH⁵ HARLAN, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born 1840 in DELAWARE DISTRICT, CHEORKEE NATION, OKLAHOMA, UNITED STATES, and died December 1878 in INDIAN TERRITORY, OKLAHOMA, UNITED STATES. She married JOHNSON S. OFIELDS 1860 in INDIAN TERRITORY, OKLAHOMA, UNITED STATES, son of JIM OLDFIELD and A (AGGIE). He was born Abt. 1835 in CHEORKEE NATION, GEORGIA, UNITED STATES, and died November 10, 1888 in INDIAN TERRITORY, OKLAHOMA, UNITED STATES.

Notes for JOHNSON S. OFIELDS:

Was on the 1852 DRENNA ROLL for new arrivals to the

INDIAN TERRITORY from the "TRAIL OF TEARS"

More About JOHNSON S. OFIELDS:

Burial: OFIELD CEMETERY, DELAWARE COUNTY, OKLAHOMA, UNITED STATES

Children of ELAN BAILEY and JOHNSON OFIELDS are:

18. i. AUSTIN⁸ OFIELDS, b. December 31, 1860, DELAWARE DISTRICT, CHEORKEE NATION, OKLAHOMA, UNITED STATES; d. 1917.
- ii. LIZZIE ("SIS") OFIELDS, b. June 16, 1873.
- iii. PETER OFIELDS, b. June 16, 1873.
- iv. LORETTA LULA OFIELDS.

Generation No. 7

18. AUSTIN⁸ OFIELDS (*ELAN⁷ BAILEY, CATHERINE⁶ HILDEBRAND, ELIZABETH⁵ HARLAN, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born December 31, 1860 in DELAWARE DISTRICT, CHEORKEE NATION, OKLAHOMA, UNITED STATES, and died 1917. He married ELIZA ANNIE (RAYMOND) SEVIER May 20, 1886 in CHEORKEE NATION, INDIAN TERRITORY, OKLAHOMA, UNITED STATES, daughter of ELLIS RAYMOND and SALLY WATERS. She was born January 03, 1861 in OKLAHOMA, UNITED STATES.

Children of AUSTIN OFIELDS and ELIZA SEVIER are:

19. i. ALSIE LEE⁹ OFIELDS, b. June 14, 1887, DELAWARE DISTRICT, CHEORKEE NATION, OKLAHOMA, UNITED STATES; d. August 10, 1945, OKLAHOMA CITY, OKLAHOMA COUNTY, OKLAHOMA, UNITED STATES.
- ii. ROSA FLORENCE OFIELDS, b. Bet. March 04 - 08, 1892, INDIAN TERRITORY, OKLAHOMA, UNITED STATES.
- iii. ELDORADO OFIELDS, b. June 13, 1894, INDIAN TERRITORY, OKLAHOMA, UNITED STATES.

Generation No. 8

19. ALSIE LEE⁹ OFIELDS (*AUSTIN⁸, ELAN⁷ BAILEY, CATHERINE⁶ HILDEBRAND, ELIZABETH⁵ HARLAN, CATHERINE⁴ KINGFISHER, NANYE'HI OR NANCY (THE³ GHIGUA), TAME² DOE, MOYTOY¹*) was born June 14, 1887 in DELAWARE DISTRICT, CHEORKEE NATION, OKLAHOMA, UNITED STATES, and died August 10, 1945 in OKLAHOMA CITY, OKLAHOMA COUNTY, OKLAHOMA, UNITED STATES. She married SOLOMON LEONARD KAISER, son of ANDREW KAISER and CATHERINE STILL. He was born June 18, 1887 in DELAWARE DISTRICT, CHEORKEE NATION, OKLAHOMA, UNITED STATES, and died March 13, 1945 in TULSA COUNTY, OKLAHOMA, UNITED STATES.

More About SOLOMON LEONARD KAISER:

Census: 1930

Occupation: 1930, TRUCK DRIVER

Children of ALSIE OFIELDS and SOLOMON KAISER are:

20. i. HERMAN GEORGE¹⁰ KAISER, b. 1919.
- ii. DOROTHY A. KAISER, b. November 04, 1924; d. December 20, 1997.

More About DOROTHY A. KAISER:

Burial: FAIRVIEW CEMETERY, OWASSO, TULSA COUNTY, OKLAHOMA, UNITED STATES

- iii. ROSA M. KAISER, b. 1915.
- iv. SOLOMON V. KAISER, b. February 27, 1916; d. June 10, 1965.

More About SOLOMON V. KAISER:

Burial: FAIRVIEW CEMETERY, OWASSO, TULSA COUNTY, OKLAHOMA, UNITED STATES

Social Security Number: 447-03-2253--OKLAHOMA

- v. MAUD KAISER, b. 1911.
- vi. JENNIETA KAISER, b. 1927.

20. HERMAN GEORGE¹⁰ KAISER (*ALSIE LEE*⁹ *OFIELDS*, *AUSTIN*⁸, *ELAN*⁷ *BAILEY*, *CATHERINE*⁶ *HILDEBRAND*, *ELIZABETH*⁵ *HARLAN*, *CATHERINE*⁴ *KINGFISHER*, *NANYE'HI OR NANCY (THE*³ *GHIGUA*), *TAME*² *DOE*, *MOYTOY*¹) was born 1919.

Notes for HERMAN GEORGE KAISER:

FindLaw: State Resources: Oklahoma: Primary Materials: Oklahoma Court Opinions

GARD v. KAISER

No. 50186.

582 P.2d 1311

1978 OK 110

Decided: July 19, 1978.

As Corrected August 8, 1978.

Supreme Court of Oklahoma.

GENE I. GARD, AND DON ALLAN GARD, APPELLANTS,

v.

HERMAN GEORGE KAISER, FRANCIS OIL AND GAS INC., FELL AND WOLFE OIL COMPANY, JENE EICHENBERG, MILDRED SANDITEN, RENEE NEUWALD, ROSE SCHLANGER, ADOLPH NEUWALD, AND

WALTER KAISER, ALL GENERAL PARTNERS, D/B/A KAISER-FRANCIS SPECIAL ACCOUNT "B", A GENERAL PARTNERSHIP, APPELLEES.

Appeal from the Trial Court.

!0 Certiorari to Court of Appeals, Division 2.

Action to cancel leases for failure to pay shut-in royalty payments after expiration of primary terms of oil and gas leases. Judgment for lessees, lessors appeal.

CERTIORARI GRANTED. COURT OF APPEALS OPINION VACATED, TRIAL COURT AFFIRMED.

C.D. Curtis, Curtis & McCune, Fairview, for appellants.

Holliman, Langholz, Runnels & Dorwart, by Frederic Dorwart, J. Michael Medina, Judith K. Pensabene, Tulsa, for appellees.

H.B. Watson, Jr., Gregory L. Mahaffey, Ruchard K. Brooks, of Watson, McKenzie & Moricoli, Oklahoma City, for Supron Energy Corporation, amicus curiae.

BERRY, Justice:

!1 This action was brought by Gene I. Gard and Don Allan Gard, plaintiffs [appellants], lessors herein, to cancel oil and gas leases for failure of lessees, Herman George Kaiser, Francis Oil & Gas Inc., Fell and Wolfe Oil Company, Jene Eichenberg, Mildred Sanditen, Renee Neuwald, Rose Schlanger, Adolph Neuwald, and Walter Kaiser, all General Partners, d/b/a Kaiser-Francis Special Account "B", a General partnership, defendants [appellees] to pay shut-in gas royalty.

!2 The question in this case is the effect of failure to pay shut-in royalty to lessors under shut-in gas provisions of three oil and gas leases. Two of the leases were dated March 25, 1967, with primary term of five years, and the other was dated February 17, 1970, with primary term of six months. These leases covered the same well location, upon which a well was completed and production

commenced within the primary terms of all three leases.

13 Gas from this well was sold from 1970 until 1972, when gas pressure from the well became too low for gas to enter the pipeline for the market of gas.

14 After the well pressure had declined appellees [having failed to have the pipeline pressure reduced] applied to the Federal Power Commission to permit release from the gas sales contract so they could sell to another company. More than a year later the Federal Power Commission authorized the abandonment of the contract.

15 After further negotiations a new contract was entered between the lessees and the former purchaser at a much increased price. The new contract required the purchaser to install a compressor to enable gas from the well to enter the pipeline.

16 Gas was again marketed from this well from April 1975 to date of trial under the new contract.

17 There had been no shut-in royalty payments made to the lessors by the lessees during the period of time when the well was shut in from 1972 until 1975.

18 The primary terms of all three leases expired during production and prior to the time the leases were shut in.

19 Appellants argue only one proposition in their brief, that in the oil and gas leases under the express provisions of the shut-in royalty payments, the leases expired because lessees failed to timely pay the specified amounts.

110 Two of the oil and gas leases, on Form 88 Prod. Pooling Oklahoma 640 shut-in, contained the following provisions:

"It is agreed that this lease shall remain in force for a term of Five (5) years from date, and as long thereafter as oil or gas, or either of them, is produced from said land by the lessee.

* * * * *

"2nd. * * * Where gas from a well producing gas only is not sold or used, lessee may pay or tender a royalty of One Dollar (\$1.00) per year per net royalty acre retained hereunder, such payment * * * made, on or before the anniversary date of this lease next ensuing after the expiration of ninety (90) days from the date such well shut in and thereafter on the anniversary date of this lease during the period such well is shut in, to the royalty owners * * * If such payment or tender is made it will be considered that gas is being produced within the meaning of the preceding paragraph."

111 The third oil and gas lease on Form 88 Prod. Pooling Shut In Paid Up, Revised 1963, contained the following provisions:

"It is agreed that this lease shall remain in force for a term of 6 months from March 22, 1970, (herein called primary term) and as long thereafter as oil and gas, or either of them, is produced from said land by the lessee.

* * * * *

"2nd. * * * During any period (whether before or after expiration of the primary term hereof) when gas is not being so sold or used and the well or wells are shut in and there is no current production of oil or operations * * * lessee

shall pay * * * a royalty of One Dollar (\$1.00) per year per net royalty acre retained * * * such payment * * * to be made, on or before the anniversary date of this lease * * * from the date such well is shut in and thereafter on the anniversary date of this lease during the period such well is shut in, to the royalty owners. * * * When such payment * * * is made it will be considered that gas is being produced within the meaning of the entire lease. * * *

¶12 In deciding this case we must ascertain if the language in the above clauses operates to set a specific termination date.

¶13 Lessors contend the clauses "so long as" and "as long as" impose a special limitation on the estate of the lessees and that as soon as production ceases a special limitation occurs and the lease "automatically terminates." They conclude that production will keep the lease alive but in substance say as soon as production ceases and the lease is shut in, the lease expired, citing *Anthis v. Sullivan Oil & Gas Co.*, 83 Okl. 86, 203 P. 187.

¶14 Lessors also argue that the instrument is unambiguous and the intent of the parties can be determined from its language and that the lease should be construed against the lessee and in favor of the lessor, citing *Carlisle v. United Producing Co.*, 278 F.2d 893 (10th Cir.); *Lima Oil and Gas Co. v. Pritchard*, 92 Okl. 113, 218 P. 863. Appellants also cite *Greer v. Salmon*, 82 N.M. 245, 479 P.2d 294.

¶15 Lessors cite *Flag Oil Corp. v. King Resources*, Okl., 494 P.2d 322, and distinguish it from the case at hand, pointing out in that case the original lease did not contain any provisions for shut-in royalty payments, and that toward the end of the primary term the parties amended the lease for an additional two years with provisions for shut-in royalty payments and that payments were made. Lessors concluded that the case is not in point because it did not involve the existence of a shut-in clause.

¶16 Lessees' [appellees] position on appeal is that these oil and gas leases remained in effect despite non-payment of shut-in royalties so long as the lessee diligently sought and found a market for the gas.

¶17 In discussing *Greer v. Salmon*, supra, lessees contend that New Mexico cases are contrary to the Oklahoma position in so far as oil and gas lease questions are involved. The Supreme Court of New Mexico has held that the word "produced" includes marketing. Oklahoma, however, has consistently taken the position that "produced" does not include marketing. *McVicker v. Horn*, Okl., 322 P.2d 410.

¶18 The Oklahoma rule is set forth clearly in 4 Kuntz, *The Law of Oil and Gas* °

46.3:

"In a jurisdiction where marketing is not required as a part of the production and a commercial discovery of gas will satisfy the habendum clause, the shut-in gas royalty clause is not required as an additional special limitation to extend the term of the lease. The lease is extended with or without the shut-in gas royalty clause, subject to forfeiture for failure to comply with the implied obligation to market the product."

¶19 Lessees contend that even though facts of *Flag Oil Corp.*, supra, are not identical that the legal rationale of the case is applicable.

¶20 In *Flag Oil Corp.*, supra, the primary term expired August 8, 1962. The well had been completed and shut in in November 1959, because of the lack of market. Original lease was amended to provide for shut-in royalty but there was an apparent attempt by lessors to limit the lease extension to not later than

August 8, 1964, except under certain other circumstances. Lessees did pay shut-in royalties until August 8, 1964, and tendered further payments which lessors refused to accept. Lessees did continue to search for a market for two and one-half years after payment of shut-in royalties. Our Court cited and relied upon *McVicker v. Horn*, supra, stating that gas in paying quantities had been discovered and that marketing was not required to keep the lease in effect. Therein we expressed the necessity for lessee to continue diligently to seek a market in order to extend the lease beyond its primary terms even though the well was completed and capable of production. We said at p. 416:

"Oil and gas lessees should not be allowed to hold their leases indefinitely, while no product therefrom is being marketed and diligent efforts are not being made to accomplish this, or where, despite their efforts, there is no reasonable probability they will be successful. * *"

!21 Lessees cite *Use and Proper Drafting of Shut-In Royalty Clauses* by Dr. Merrill, 43 OBJ 2247 (1972) at p. 2252:

"To sum up, the office of a shut-in royalty clause is two-fold. In the first place, it allows the continuance of the lease, without actual production and marketing of the shut-in product by the substitution of the stipulated payment for the royalties which would accrue to the lessor from actual production and marketing. In the second place, it removes a major part of the uncertainties and doubtful applications which arise under the common law doctrine giving the lessee a reasonable time within which to achieve a market for the product. In no way at all does it operate to set a specific date for the termination of the lease. If that is to be achieved, it must be through the addition of very carefully prepared, very explicit language.

"For general discussions of shut-in royalty clauses and their function, see *Kuntz Oil and Gas*, § 26.13(c) (1964); *Williams and Meyers, Manual of Oil and Gas Terms*, 232 (1957); *Brown, Law of Oil and Gas Leases*, § 6.08 (1958)."

!22 Court of Appeals reversed trial court and found that in the present case the well was shut in after the primary term had passed. Actual production had stopped and no shut-in gas payments were made even though diligent effort had been made to market the gas. Therefore, Court of Appeals reasoned facts in the present case are distinguishable from those in *Flag*, supra. Court of Appeals pointed out that in *Flag*, supra, payment of shut-in royalties was to extend the primary term whereas in the present case the primary term had passed and actual production had stopped.

!23 Court of Appeals then reasoned that general rule and majority view is that after the primary term the leases could only be kept alive by production, actual or constructive [payment of shut-in royalties] and neither was done, citing 4 E *Kuntz, A Treatise on the Law of Oil and Gas* § 46.5, at 31 (1972) and other authorities. Thus the Court of Appeals concluded diligence in finding a market under these facts in the present case would not serve to extend the primary terms of the leases and that *Flag*, supra, would be inapplicable.

!24 Court of Appeals then concluded and held that the leases would not be kept alive for a reasonable time after the well was shut in even if lessees used diligence in seeking a market, and trial court erred in so holding. The error in the premise of the Court of Appeals' conclusion is apparent. Marketing is not a necessary inclusion in the term produced as is found in this action. Under facts herein we hold the provisions of the leases "as long thereafter as * * gas * * * is produced" do not require "marketing." We do not construe language of the leases to operate to terminate a shut-in gas well during a period lessee is diligently seeking a market.

¶25 In *McVicker v. Horn*, supra, we held in the first and second paragraphs of the syllabus:

"Where an oil and gas lease does not, in express terms, provide for the marketing of the product of a well drilled on the leased land, any covenant on the part of the lessee to do this can only be an implied one, in which instance said lessee has a reasonable time, after the completion of the well, to comply with such covenant.

"In the present action, instituted by oil and gas lessors and royalty owners, as plaintiffs, against the lessees, as defendants, seeking cancellation of an oil and gas lease on the theory of abandonment and ipso facto termination at the end of the lease's primary term; Evidence examined and Held: The trial court's judgment for defendants was not clearly against the weight of the evidence."

¶26 As it is clear in that case, as in the present case, marketing was not necessary to extend the effectiveness of the oil and gas lease. However, we conclude in this event lessee must show a diligent effort was made to market production in order to extend the lease. We further conclude in this case that shut-in gas provisions are not to be construed as limitations or conditions which would affect termination of the leases. We have carefully examined the record and hold the trial court's finding is not against the clear weight of the evidence.

¶27 For reasons hereinbefore set out we conclude the Court of Appeals' holding is a departure from prior decisions of this Court.

¶28 Court of Appeals' opinion vacated; trial court affirmed.

¶29 LAVENDER, V.C.J., and DAVISON, WILLIAMS, IRWIN, BARNES, SIMMS and DOOLIN, JJ., concur.

Child of HERMAN GEORGE KAISER is:

21. i. GEORGE B.¹¹ KAISER, CEO BANK OF OKLAHOMA, b. 1943, TULSA COUNTY, OKLAHOMA, UNITED STATES.

Generation No. 10

21. GEORGE B.¹¹ KAISER, CEO BANK OF OKLAHOMA (*HERMAN GEORGE*¹⁰, *ALSIE LEE*⁹ *OFIELDS*, *AUSTIN*⁸, *ELAN*⁷ *BAILEY*, *CATHERINE*⁶ *HILDEBRAND*, *ELIZABETH*⁵ *HARLAN*, *CATHERINE*⁴ *KINGFISHER*, *NANYE'HI OR NANCY (THE*³ *GHIGUA)*, *TAME*² *DOE*, *MOYTOY*¹) was born 1943 in TULSA COUNTY, OKLAHOMA, UNITED STATES. He married BETTY EUDENE 1965, daughter of MAURICE ("TONY") EUDENE. She died Bet. April 30 - May 01, 2002.

Notes for GEORGE B. KAISER, CEO BANK OF OKLAHOMA:

THE BILLIONAIRE WHO BOUGHT A BANK -- AND PAID NO TAXES

FRB: Press Release -- Approval of proposal of BOK Financial Corporation -- May 24, 1999

The Federal Reserve Board today announced its approval of the proposal of BOK Financial Corporation, Tulsa, Oklahoma, to acquire First Bancshares of Muskogee, Inc., its banking subsidiary, First National Bank and Trust Company of Muskogee, and its nonbanking subsidiary, First Muskogee Insurance Corporation, all of Muskogee, Oklahoma.

Attached is the Board's Order relating to this action.

BOK Financial Corporation
Tulsa, Oklahoma

BOKF Merger Corporation Number Seven
Tulsa, Oklahoma

Order Approving Acquisition of a Bank Holding Company

BOK Financial Corporation ("BOK Financial"), a bank holding company within the meaning of the Bank Holding Company Act ("BHC Act"), and BOKF Merger Corporation Number Seven ("Merger Corporation") have requested the Board's approval under section 3 of the BHC Act (12 U.S.C. §1842) to acquire First Bancshares of Muskogee, Inc. ("First Bancshares"), and its wholly owned subsidiary, First National Bank and Trust Company of Muskogee ("First National"), both of Muskogee, Oklahoma.¹ BOK Financial and Merger Corporation also have requested the Board's approval under section 4(c)(8) of the BHC Act (12 U.S.C. §1843(c)(8)) and section 225.24 of the Board's Regulation Y (12 C.F.R. 225.24) to acquire First of Muskogee Insurance Corporation, Muskogee, Oklahoma ("First Insurance"), and thereby engage in credit-related insurance agency activities pursuant to section 225.28(b)(11)(i) of the Board's Regulation Y (12 C.F.R. 225.28(b)(11)(i)).

Notice of the proposal, affording interested persons an opportunity to submit comments, has been published (64 Federal Register 1804 (1999)). The time for filing comments has expired, and the Board has considered the proposal and all comments received in light of the factors set forth in sections 3 and 4(c)(8) of the BHC Act.

BOK Financial, with total consolidated assets of \$6.8 billion, operates banks in Oklahoma, Arkansas, New Mexico, and Texas, and engages through nonbanking subsidiaries in permissible leasing and securities-related activities. BOK Financial is the largest depository institution in Oklahoma, controlling deposits of \$3.5 billion, representing approximately 10.5 percent of total deposits in insured depository institutions in the state ("state deposits").² First Bancshares is the 23d largest depository organization in Oklahoma, controlling deposits of \$218 million, representing less than 1 percent of state deposits. On consummation of the proposal, BOK Financial would remain the largest banking organization in Oklahoma, controlling deposits of \$3.7 billion, representing approximately 11.2 percent of state deposits.

Competitive Considerations

Section 3 of the BHC Act prohibits the Board from approving a proposal that would result in a monopoly in any relevant banking market. That section also prohibits the Board from approving a proposal that may substantially lessen competition in any relevant banking market, unless the anticompetitive effects of the proposal are clearly outweighed in the public interest by the probable effect of the proposal in meeting the convenience and needs of the community to be served.³

In order to determine the effect of a particular transaction on competition, it is necessary to designate the area of effective competition between the parties, which the courts have held is decided by reference to the relevant "line of commerce" or product market and a geographic market. The Board and the courts have consistently recognized that the appropriate product market for analyzing the competitive effects

of bank mergers and acquisitions is the cluster of products (various kinds of credit) and services (such as checking accounts and trust administration) offered by banking institutions.⁴ Consistent with this precedent, and on the basis of the facts of record in this case, the Board concludes that the cluster of banking products and services represents the appropriate line of commerce for analyzing the competitive effects of this proposal.

Once the relevant line of commerce or product market has been defined, the appropriate geographic market in which competition for the supply and demand of the line of commerce occurs must be defined. In defining the relevant geographic market, the Board consistently has sought to identify the area in which the cluster of products and services is provided by the competing institutions and in which purchasers of the products and services seek to obtain these products and services.⁵ The Supreme Court has indicated that this is the area in which the effect of an acquisition will be direct and immediate.⁶ In applying these standards to bank acquisition proposals, the Board and the Court consistently have held that the geographic market for the cluster of services is local in nature.⁷

The Muskogee Banking Market

BOK and First Financial operate in Muskogee, Oklahoma. In determining the geographic market to be applied in this case, the Board notes that the city of Muskogee is significantly larger than any other community in the surrounding area, and provides substantially more employment opportunities, professional and commercial services, and retail outlets than the surrounding communities.⁸

Commuting between the surrounding communities and Muskogee appears to be extensive. Divided four-lane highways connect Muskogee with the towns of Tahlequah, Wagoner, and Checotah, and traffic counts indicate that a substantial majority of the daily trips on these roads are between the four communities.⁹ Within a 10-mile radius of Muskogee, approximately 2,400 businesses employ almost 28,000 workers, which exceeds the available workforce of 21,500 in that area. A survey of the 17 largest employers in the Muskogee area, which employ 7,267 workers, found that 30 percent of their workers lived outside Muskogee and the nearby community of Ft. Gibson.¹⁰ In addition, the Oklahoma Department of Commerce divides the state of Oklahoma into 23 labor markets. The department includes Muskogee in the Muskogee-Tahlequah labor market, which comprises all of Muskogee County, all of Cherokee County (including Tahlequah), the eastern half of Wagoner County (including Wagoner), the northern half of McIntosh County (including Checotah), and Adair County.¹¹

Muskogee also offers a broad range of goods and services that are unavailable in the surrounding communities and that attract residents to Muskogee. Muskogee has a 336-bed hospital staffed by more than 200 physicians, a Veterans Administration hospital, 160 businesses in the health services industry, and an enclosed mall that features three major national department store anchors and several other national retail chains. Data from the mall's anchor stores indicate that only 40 percent of their sales are derived from Muskogee residents, and that the majority of their business is from residents of the surrounding communities.¹² A survey conducted by the Federal Reserve Bank of Kansas City ("Reserve Bank") revealed that 55 percent of respondents in Tahlequah traveled to Muskogee at least once a month, including 13 percent who reported that they traveled to Muskogee at least once a week. In Wagoner, 70 percent of respondents indicated that they traveled to Muskogee at least once a

month, including 32 percent who traveled to Muskogee at least once a week.

Newspaper circulation statistics also indicate that there is extensive economic interaction between Muskogee and Tahlequah. Approximately 22 percent of Tahlequah households receive the daily Muskogee newspaper, which features stories about events in Tahlequah and advertisements by Tahlequah businesses.¹³ In addition, both the daily and the weekly newspaper in Tahlequah regularly carry news stories about events in Muskogee and advertisements by Muskogee businesses.¹⁴ All four radio stations in Muskogee advertise in the Tahlequah newspaper and carry advertisements for Tahlequah businesses. The local telephone book for the "Muskogee-Tahlequah Region" combines listings for businesses in those two communities, Wagoner, Checotah, and other small towns in the area. Discussions by the Reserve Bank with local bankers and business and civic leaders also indicated that businesses in Tahlequah regularly seek financial services in Muskogee, and that the distance between the communities is not a significant impediment.¹⁵ Based on Reserve Bank surveys, it further appears that there is little or no difference in prices for banking products and services among Muskogee and the surrounding communities, including Tahlequah.

Based on the foregoing and all other facts of record, the Board concludes that the appropriate banking market for considering the competitive effects of this case is the cluster of banking products and services, and that the appropriate geographic market for considering the competitive effects of this proposal is the area that includes Muskogee County, Cherokee County (including Tahlequah), the eastern half of Wagoner County (including Wagoner), and the town of Checotah in McIntosh County, all in Oklahoma (the "Muskogee banking market").

In the Muskogee banking market, BOK Financial is the third largest depository institution, controlling deposits of \$148 million, representing approximately 12.8 percent of all deposits held by depository institutions in the market ("market deposits").¹⁶ First Bancshares is the second largest depository institution in the market, controlling deposits of \$217 million, representing approximately 18.9 percent of market deposits. On consummation of the proposal, BOK Financial would become the largest depository institution in the Muskogee banking market, controlling deposits of \$365 million, representing approximately 31.7 percent of market deposits. The concentration of market deposits, as measured by the Herfindahl-Hirschman Index ("HHI"), would not exceed the threshold level set in the Department of Justice Merger Guidelines ("DOJ Guidelines").¹⁷ In reviewing the likely competitive effects of the proposal in the Muskogee banking market, the Board has considered all the facts of record.

Twelve commercial banks, including BOK Financial, and two savings associations would remain in the market after consummation of the proposal, which represents a large number of competitors relative to the size of the market.¹⁸ One competing commercial bank would control more than 20 percent of market deposits, and 5 additional competing commercial banks would each control at least five percent of market deposits. The market also appears attractive for additional entry. From 1990 to 1998, household income increased 33 percent in Muskogee County and 39.1 percent in Cherokee County, compared to an average statewide increase of 19.5 percent. Deposits also increased at a higher percentage than the statewide average. Total deposits in insured depository institutions increased 20.2 percent in Muskogee County and 14.7 percent in Cherokee County, compared to an average increase of 14.6 percent statewide. Cherokee County's population increased 14.3 percent from 1990 to 1998,

compared to an average statewide increase of 2.4 percent.

Thus, the market structure and other characteristics of the Muskogee banking market, including the significant number of depository institutions in the market, the market shares and resources of those institutions, and the potential for entry by additional competitors, reduce the likelihood of successful anticompetitive pricing or collusion in the market. As in other cases, the Board sought comments from the Department of Justice, the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of the Currency ("OCC") on the competitive effects of the proposal. Neither the FDIC nor the OCC have objected to the proposal.¹⁹

Based on all the facts of record, and for the reasons discussed above, the Board concludes that consummation of the proposal would not result in a monopoly or have a significantly adverse effect on competition or on the concentration of banking resources in the Muskogee banking market or any other relevant banking market.

Financial, Managerial, and Other Considerations

The BHC Act also requires the Board to consider the financial and managerial resources and future prospects of the companies and banks involved in the proposal, the convenience and needs of the community to be served, and certain supervisory factors. The Board has reviewed these factors in light of all the facts of record, including supervisory reports of examination assessing the financial and managerial resources of the organizations. Based on all the facts of record, the Board concludes that the financial and managerial resources and future prospects of BOK Financial, First Bancshares, and their respective subsidiaries are consistent with approval. Considerations related to the convenience and needs of the community and the other supervisory factors the Board must consider under section 3 of the BHC Act also are consistent with approval.

Nonbanking Activities

BOK Financial also has filed a notice under section 4(c)(8) of the BHC Act to acquire First Bancshares' nonbanking subsidiary, First Insurance, and thereby engage in credit-related insurance agency activities. The Board has determined by regulation that providing credit-related insurance is closely related to banking for purposes of the BHC Act.²⁰ BOK Financial has committed to conduct this nonbanking activity in accordance with the limitations set forth in Regulation Y and the Board's orders and interpretations governing this activity.

In order to approve a notice under section 4(c)(8) of the BHC Act, the Board also must determine that the proposed activities are a proper incident to banking, that is, that the proposal "can reasonably be expected to produce benefits to the public . . . that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."²¹ As part of its evaluation of these factors, the Board considers the financial condition and managerial resources of the notificant and its subsidiaries, including the companies to be acquired, and the effect of the proposed transaction on those resources. Based on all the facts of record, the Board has concluded that financial and managerial considerations are consistent with approval of the notice. BOK currently does not provide credit-related insurance and, therefore, the proposed acquisition would not result in a loss of competition in any

market. Based on all the facts of record, the Board has concluded that the proposal would not result in any significantly adverse competitive effects in any relevant market. In addition, as the Board has previously noted, there are public benefits to be derived from permitting capital markets to operate so that bank holding companies can make potentially profitable investments in nonbanking companies and from permitting banking organizations to allocate their resources in the manner they consider to be most efficient when such investments and actions are consistent, as in this case, with the relevant considerations under the BHC Act.²²

The Board also concludes that the conduct of the proposed nonbanking activity within the framework established under Regulation Y is not likely to result in adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, that would outweigh the public benefits of the proposal, such as increased customer convenience and gains in efficiency. Accordingly, based on all the facts of record, the Board has determined that the balance of public benefits that the Board must consider under the proper incident to banking standard of section 4(c)(8) of the BHC Act is favorable and consistent with approval of BOK Financial's notice.

Conclusion

Based on the foregoing, and in light of all the facts of record, the Board has determined that the applications and notice should be, and hereby are, approved. Approval of the applications and notice is specifically conditioned on compliance by BOK Financial with all the commitments made in connection with the proposal and with the conditions stated or referred to in this order. The Board's determination on nonbanking activity also is subject to all the terms and conditions set forth in sections 225.7 and 225.25(c) (12 C.F.R. 225.7 and 25.25(c)), and to the Board's authority to require such modification or termination of the activities of a bank holding company or any of its subsidiaries as the Board finds necessary to ensure compliance with, and to prevent evasion of, the provisions of the BHC Act and the Board's regulations and orders thereunder. For purposes of this order, the commitments and conditions referred to above are deemed to be conditions imposed in writing by the Board in connection with its findings and decision and, as such, may be enforced in proceedings under applicable law.

The acquisition of First National shall not be consummated before the thirtieth calendar day after the effective date of this order, and the proposal may not be consummated later than three months after the effective date of this order, unless such period is extended for good cause by the Board or by the Reserve Bank, acting pursuant to delegated authority.

By order of the Board of Governors,²³ effective May 24, 1999.
(signed) Robert deV. Frierson
Robert deV. Frierson

Associate Secretary of the Board

Footnotes

¹ Merger Corporation has filed an application to become a bank holding company in connection with the proposed transaction. Merger Corporation and First Bancshares would merge, with Merger Corporation as the survivor. BOK Financial proposes to merge First National into BOK Financial's

subsidiary bank, Bank of Oklahoma, National Association ("BOK"), on consummation of the proposal, subject to approval by the Office of the Comptroller of the Currency under the Bank Merger Act.

² All asset, deposit, and ranking data are as of June 30, 1998. In this context, depository institutions include commercial banks, savings banks, and savings associations.

³ 12 U.S.C. §1842(c)(1).

⁴ See Chemical Banking Corporation, 82 Federal Reserve Bulletin 239 (1996) ("Chemical"), and the cases and studies cited therein. The Supreme Court has emphasized that it is the cluster of products and services that, as a matter of trade reality, makes banking a distinct line of commerce. See *United States v. Philadelphia National Bank*, 374 U.S. 321, 357 (1963) ("Philadelphia National"); accord *United States v. Connecticut National Bank*, 418 U.S. 656 (1974); *Phillipsburg National Bank*, 399 U.S. 350 (1969) ("Phillipsburg National").

⁵ See, e.g., *Sunwest Financial Services, Inc.*, 73 Federal Reserve Bulletin 463 (1987); *Pikeville National Corporation*, 71 Federal Reserve Bulletin 240 (1985); *Wyoming Bancorporation*, 68 Federal Reserve Bulletin 313 (1982), *aff'd* 729 F.2d 687 (10th Cir. 1984).

⁶ *Philadelphia National*, 374 U.S. at 357 (1963). In that case, the Court stated that the "area of effective competition in the known line of commerce must be charted by careful selection of the market area in which the seller operates, and to which the purchaser can practicably turn for supplies." *Id.* at 359 (emphasis in original) (quoting *Tampa Electric Co. v. Nashville Coal Co.*, 365 U.S. 320, 327 (1961)).

⁷ See *Philadelphia National*, 374 U.S. at 357; *Phillipsburg National*; *First Union Corporation*, 84 Federal Reserve Bulletin 489 (1998); *Chemical*; *St. Joseph Valley Bank*, 68 Federal Reserve Bulletin 673 (1982) ("St. Joseph"). In determining the geographic scope of local banking markets, the Board considers a number of factors, including the following: population density; worker commuting patterns (as indicated by census data); shopping patterns; the availability and geographic reach of various modes of advertising; the presence of shopping, employment, health care, and other necessities; the availability of transportation systems and routes; branch banking patterns; deposit and loan activity; and other indicia of economic integration and the transmission of competitive forces among depository institutions that affect the pricing and availability of banking products and services. See *Crestar Bank*, 81 Federal Reserve Bulletin 200, 201 n.5 (1995); *Pennbancorp*, 69 Federal Reserve Bulletin 548 (1983); *St. Joseph*.

⁸ The population of the Muskogee Regionally Metropolitan Area, which closely approximates the city of Muskogee and immediately adjacent communities, is approximately 50,000. The next largest towns in the area are Tahlequah (population 11,965); Wagoner (population 7,242); and Checotah (population 3,290).

⁹ For example, more than 10,000 vehicles pass daily between Tahlequah and Muskogee on U.S. Highway 62. East of Tahlequah and west of Muskogee, this highway has two lanes and the traffic count drops to 1,500, according to the Oklahoma Department of Transportation.

¹⁰ The statistics are from a survey by the Greater Muskogee Development Corporation. The survey indicated that 13.7 percent of the workforce in

Tahlequah was employed in Muskogee County. Data from the 1990 United States census indicate that 23 percent of the workforce in the town of Checotah and 19 percent of the workforce in the town of Wagoner were employed in Muskogee County.

11 In response to a survey conducted by the Federal Reserve Bank of Kansas City, the Tahlequah office of the Oklahoma Employment Security Commission reported that it placed 10 percent to 15 percent of its applicants in jobs in Muskogee, and employment services in Muskogee indicated that 10 percent to 20 percent of their applicants were from Tahlequah.

12 Tahlequah residents provided approximately 10 percent of the stores' receipts, and sales to residents of Wagoner and Checotah approximated their percentage of the area population.

13 In addition, more than one-third of the households in Wagoner and three-fourths of the households in Checotah receive the Muskogee daily newspaper.

14 An independent newspaper circulation audit firm has determined that the newspaper market for the Muskogee daily newspaper includes all of Muskogee County, western portions of Cherokee County (including Tahlequah), eastern portions of Wagoner County (including Wagoner), and northeastern portions of McIntosh County (including Checotah).

15 The Tahlequah office of Oklahoma Small Business Development Center indicated that it often refers its small business clients in Tahlequah to banks in Muskogee to obtain financing.

16 Market share data are based on calculations in which the deposits of thrift institutions are included at 50 percent. The Board previously has indicated that thrift institutions have become, or have the potential to become, significant competitors of commercial banks. See Midwest Financial Group, 75 Federal Reserve Bulletin 386 (1989); National City Corporation, 70 Federal Reserve Bulletin 743 (1984). Thus, the Board has regularly included thrift institutions in the calculation of market shares on a 50-percent weighted basis. See, e.g., First Hawaiian, Inc., 77 Federal Reserve Bulletin 52 (1991).

17 On consummation of the proposal, the HHI would increase 484 points to 1705. Under the DOJ Guidelines (49 Federal Register 26,823 (June 29, 1984)), a market in which the post-merger HHI is between 1000 and 1800 is considered to be moderately concentrated. The Department of Justice has informed the Board that a bank merger or acquisition generally will not be challenged (in the absence of other factors indicating anticompetitive effects) unless the post-merger HHI is at least 1800 and the merger increases the HHI by more than 200 points. The Department of Justice has stated that the higher than normal HHI thresholds for screening bank mergers for anticompetitive effects implicitly recognize the competitive effects of limited-purpose lenders and other nondepository financial entities.

18 In addition, BOK Financial has contracted, after consummation of the proposal, to divest two offices and \$2 million of deposits in Muskogee to

CITIZENS SELLING TO BANK OF OKLAHOMA

BOK FINANCIAL CORP., the parent company of BANK OF OKLAHOMA, has more than \$3.3 billion in assets, a prepared company statement said.

With the pending acquisition of CITIZENS, BOK has 61 locations, including 21 in the Oklahoma City metropolitan area, 21 in Tulsa and three in north-west Arkansas. BOK serves 10 other communities with 16 locations across the state.

When Paul Rowsey would visit CITIZENS BANK as a boy it looked a lot like it did today.

"It was a very homey place," the Muskogee resident of 65 years said.

But times are changing.

Thursday L.F. Rooney III, chairman of the bank's board of directors, announced this 70-year Muskogee institution agreed to sell to BANK OF OKLAHOMA.

"It was inevitable," said Rowsey, a boyhood friend of Rooney's father former bank vice president L.F. Rooney Jr. "At one time FIRST NATIONAL, COMMERCIAL BANK and CITIZENS were the three (3) banks in town. They were the staples of MUSKOGEE.

Thursday's announcement marks the second sale of a historically Muskogee-owned bank in less than a year. Commercial was the first to sell to BANK IV.

FIRST NATIONAL BANK & TRUST COMPANY OF MUSKOGEE

The oldest bank in OKLAHOMA---the First National Bank and Trust Company of Muskogee---was organized on June 7, 1890, after more than a year of negotiations begun by Robert L. Owen, C.E. Foley, and other citizens of the frontier city of MUSKOGEE.

The bank's first Board of Directors consisted of Robert L. Owen, President, A.W. Robb, T.B. Neddles, F.B. Severs, P.J. Byrne, C.W. Turner, and Leo Bennett, all of Muskogee; H.W. Salmon, Clinton, Missouri; W.O. Cox, Kansas City, Missouri; C.E. Foley, Eufaula; J.E. Reynolds, South McAlester; and John Adams, Parsons, Kansas.

After the charter was approved, the bank opened for business on April 22, 1890, with a capital structure of \$100,000 at its first location in the SEVERS BLOCK BUILDING on the Southeast Corner of Second (2) Street and Broadway. In 1908 the CITY NATIONAL BANK was absorbed, further increasing the size and enlarging the field of services of First National.

KING HARRISON (THOMAS) LA TOURS RESEARCH SERVICES INC.//

More About GEORGE B. KAISER, CEO BANK OF OKLAHOMA:
Heir Presumptive: FORTUNE AND MONEY WAS INHERITED

Notes for BETTY EUDENE:

KAISER -- Betty . As a daughter, sister, wife, mother, grandmother, aunt and above all, friend, Betty shared with all of us her gift of teaching and love of learning. She always found a way to make even the most mundane more fun, whether it was the "lunch faces" she made from sandwich triangles and fruit or the games she invented. Betty encouraged her children to imagine and explore, supporting an endless array of after-school activities and never balking at the odd pets that came home -- hermit crabs, injured birds and mice, to name a few. She fostered creativity and treasured every piece of artwork, saving reams of early masterpieces and each letter sent from camp or college. Her sense of beauty, whimsy and order were expressed through her love of classical music (especially Bach), literature, New England scenery, birch trees, notes to her children personifying inanimate objects, water skiing, lobsters (both marine and felt), orange circus peanuts (a love-hate relationship), homemade pancakes, thematic napkins, tiny little packages of food in the refrigerator. Betty maintained a lifelong concern for disadvantaged people, which she expressed through her volunteer work over many years in the Adult Literacy Program of the Tulsa Public Library, Parent Child Center, Community Action Project, a parenting program at the Department of Human Services and Planned Parenthood. She was a Professional Educator with a Master of Arts Degree in Teaching from Harvard and an undergraduate degree (Phi Beta Kappa) in English Literature from Smith College. She worked in the homebound teaching program at Tulsa Public Schools, was Administrator of Undercroft Montessori School and taught English at Tulsa Community College for 14 years. Betty always preferred dealing directly with clients and students rather than assuming more public roles. She particularly appreciated working with the diverse, adult students at TCC-Metro Campus, who were eager to enhance their knowledge in order to discover new professional and life opportunities. She often extended herself to help her students overcome personal obstacles by dropping assignments off at their homes or granting flexible deadlines. Betty married her husband, George, in 1965 and moved to Tulsa the following year. She was devoted to their 3 children, Philip, Leah and Emily and 3 grandchildren, Shai, Eytan and Aidan. She had a gift for always selecting the right book or toy to match their interests. She instilled in them her love of reading and her compassion for others. Betty is survived by: her father, Maurice ("Tony") Eudene of Cranford, NJ; her husband, George; her 3 children, Philip Kaiser and his wife, Miranda and their sons, Shai and Eytan of Jerusalem, Israel, Leah Kaiser of Chicago and Emily Kaiser and her husband, Gene Bulmash and their son, Aidan of London, England; her foster son, Mony So and his wife, Kha and their children, Ryan and Leahna; her brother, Steven Eudene and his wife, Bobbie of White Plains, NY and their children, Larry and Debbie. The funeral service will be held at 1 p.m., Sunday at Congregation B'nai Emunah. In lieu of flowers the family requests that gifts be made to the Literacy Program of the Tulsa Public Library, Community Action Project, Parent Child Center or Planned Parenthood. The Fitzgerald Ivy Chapel, 918-585-1151.

Children of GEORGE KAISER and BETTY EUDENE are:

22. i. PHILIP¹² KAISER.

- ii. LEAH KAISER.
- 23. iii. EMILY KAISER.

Generation No. 11

22. PHILIP¹² KAISER (*GEORGE B.*¹¹, *HERMAN GEORGE*¹⁰, *ALSIE LEE*⁹ *OFIELDS*, *AUSTIN*⁸, *ELAN*⁷ *BAILEY*, *CATHERINE*⁶ *HILDEBRAND*, *ELIZABETH*⁵ *HARLAN*, *CATHERINE*⁴ *KINGFISHER*, *NANYE'HI OR NANCY (THE*³ *GHIGUA)*, *TAME*² *DOE*, *MOYTOY*¹) He married MIRANDA.

Children of PHILIP KAISER and MIRANDA are:

- i. SHAI¹³ KAISER.
- ii. EYTAN KAISER.

23. EMILY¹² KAISER (*GEORGE B.*¹¹, *HERMAN GEORGE*¹⁰, *ALSIE LEE*⁹ *OFIELDS*, *AUSTIN*⁸, *ELAN*⁷ *BAILEY*, *CATHERINE*⁶ *HILDEBRAND*, *ELIZABETH*⁵ *HARLAN*, *CATHERINE*⁴ *KINGFISHER*, *NANYE'HI OR NANCY (THE*³ *GHIGUA)*, *TAME*² *DOE*, *MOYTOY*¹) She married GENE BULMASH.

Child of EMILY KAISER and GENE BULMASH is:

- i. AIDAN¹³ BULMASH.