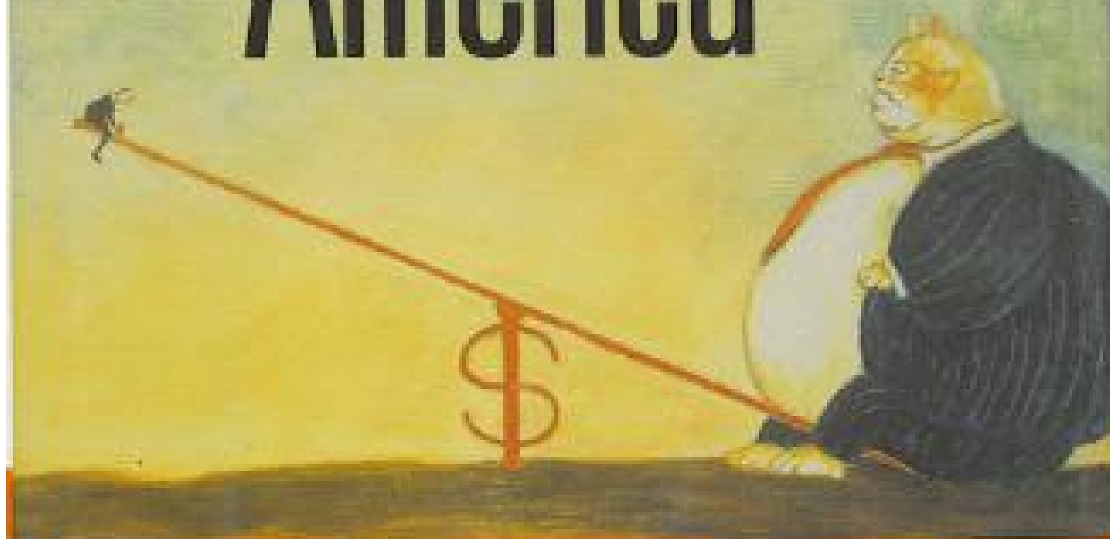
The Cheating of America



How Tax Avoidance and Evasion by the Super Rich Are Costing the Country Billions—and What You Can Do About It

Charles Lewis and Bill Allison
and the Center for Public Integrity

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Well-to-Do

George B. Kaiser was already a wealthy man when he did the deal that made him a billionaire.

Tall and lean, now in his fifties, the Harvard-educated native of Tulsa made his first fortune in Oklahoma's oil and gas business. It's an industry whose giddy booms, followed by brutal busts, have ruined any number of entrepreneurs. Kaiser, however, managed to prosper through both good times and bad.

And it's no wonder. The impatient Sooner, who can't seem to get his words out fast enough, gets straight down to business and sticks to it. If a meeting strays from the matter at hand, Kaiser will get up and leave. He lives at a pace his friends call "Kaiser Time"—a breakneck pace in which everything must go according to his schedule and needs. Pity the executive whose arrival doesn't coincide with the keeper of Kaiser Time.

The shrewd and thrifty oilman doesn't look like a multimillionaire. He's not showy or ostentatious, and he doesn't stand out in a crowd. He doesn't own mansions in offshore locales. He certainly doesn't flaunt his wealth. Though he could afford the sleekest of sports cars or a fleet of limousines, he prefers driving beat-up company cars. "I just

want reliable transportation to get from point A to point B," he told the Center in an interview. Still, some who know him best could see him for what he is.

"He always looked like a winner," said Wayne Swearingen, a onetime oilman, now a semiretired consultant, who knows and admires Kaiser. "He doesn't participate even in some of the oil and gas advocacy organizations that his father was quite active in. I guess he considers it a waste of his time and money."

That may be because Kaiser has made a practice of not following the conventional wisdom of his colleagues and competitors in the energy business. When everyone is buying, he sells. When everyone is selling, he buys. And when he sees an opportunity to make a fortune, he pounces.

In 1990, Kaiser forwent the "black gold" that had so enriched him for an altogether different endeavor: he bought the Bank of Oklahoma, N.A., from the Federal Deposit Insurance Corporation, the government agency that guarantees the soundness of the nation's major savings institutions. At the time, Oklahoma was reeling from the worst financial crisis in its history. But Kaiser saw the potential for profit in the state's largest savings institution, which only a few years earlier had nearly collapsed in a sea of red ink. And that potential was realized soon thereafter: buying the bank landed him on *Forbes* magazine's list of the 400 wealthiest Americans, and ultimately pushed his net worth to well over $1 billion.

What's more, Kaiser pulled it all off at a time when he claimed he had no income, and paid almost nothing in federal income taxes. He didn't need offshore trusts, controlled foreign corporations, or a passport from Belize to make his tax-free billion. With his shrewdness, his eye for a deal, and his adept handling of the Internal Revenue Code, he was able to turn Oklahoma into his own personal tax haven.

Oklahoma's economy rises and falls with the price of oil. In the 1970s, while the rest of the nation suffered through an energy crisis that led to

gas lines, high unemployment, recession, and the twin double-digit inflation and interest rates, the demand for oil caused a boom in the state. Wells that had been unprofitable to drill in the days of $10-a-barrel oil suddenly became gold mines when the OPEC cartel pushed the price upward of $40. A bumper sticker of the time captured the mood of Sooners: "If you don't have an oil well, get one."

Thanks to his father, Kaiser had several. Herman Kaiser fled Nazi Germany in 1938 and settled his family in Tulsa. After the war, he arranged sales of oil field pipe between German firms and American companies. In 1949, the elder Kaiser got into oil and gas production, drilling wells in western Kansas. He had relatives in the business who ran a firm called Francis Oil & Gas, Inc.; by the time George was ready to work for his father, the name had been changed to Kaiser-Francis Oil Company, and Herman Kaiser was the owner.

George was born in 1942, attended Tulsa public schools, and went on to earn a bachelor's degree and a master's in business administration at Harvard University. He briefly considered joining the U.S. foreign service, but instead returned to his hometown in 1966 to work for his father. In 1969, George took over management of the business.

At that time, Kaiser-Francis Oil was a company with all of ten employees, just another of the many small, independent oil and gas producers. But in the years that followed, Kaiser turned the firm into the largest privately held producer of natural gas in the state. Like many of his fellow Sooners, Kaiser rode the boom brought on by the 1970s energy crisis. He drilled for oil in western Kansas, he bought natural gas properties in Louisiana and Texas, and he greatly expanded his holdings in his home state. But in 1979, he decided to ride the boom in a different direction.

From 1979 to 1982, when everyone wanted a well of his own, Kaiser made millions by selling off many of his oil and gas properties at peak prices. "We have no pride of ownership," he told *Forbes* in a 1991 interview, explaining the sales. "You can't be emotional." The strategy fit in with Kaiser's business philosophy, which is to go against the conventional wisdom. "I love deals when people on the other side

are using rules of thumb," he said in the interview. "That means they're not doing the analysis."

Kaiser's analysis pointed him to banking, so he bought 2.7 percent of BancOklahoma Corporation, the parent company of Tulsa-based Bank of Oklahoma. With his purchase of the stock came a seat on the bank's board of directors, a position he assumed in 1980.

Banks in Oklahoma had made a fortune loaning billions during the boom, on the premise that oil prices would keep climbing; some experts predicted $100-a-barrel crude in a matter of years. As a result, investing in drilling seemed like a sure thing, even as interest rates shot upward in the late 1970s and early 1980s. "The oil and gas industries were one of the few areas where people thought you could borrow at 21.5 percent interest rates and still make a profit," Charles Cheatham, the general counsel of the Oklahoma Bank Association, told the Center. "Money came pouring into the state from all over the country. That had an effect on the whole state. Apartments and office buildings had 99 percent occupancy rates. This was an incredible bubble."

But as OPEC's pricing regime began to collapse, the bubble burst. The price of oil did what had been unthinkable to those who were confidently predicting that crude oil would soar: it declined. The first big drop occurred in April 1981; the price spiraled downward until, by 1986, it had reached levels not seen since the early 1970s. Suddenly, all those Oklahoma wells were unprofitable again. The same banks that had loaned billions during the boom found themselves holding mountains of bad debt. And that debt, it turned out, was backed by devalued assets, as oil producers went bankrupt, apartment and office buildings stood empty, and the state's energy-dependent economy collapsed along with the price of crude.

The Bank of Oklahoma might have weathered the storm, since it had largely avoided the lending binge. But in 1984, the bank had gone on an acquisition spree, buying nine banks in the Tulsa area and a tenth, Fidelity Bank, N.A., in Oklahoma City. Fidelity's books were dripping red ink from the energy sector loans it had made in the boom days. "I think perhaps the company did not do an adequate job of

determining how serious the problems at Fidelity were," Kaiser told the *Tulsa World* in an October 1990 interview.

Even though the management at the Bank of Oklahoma understood the depth of the problems at Fidelity, they nonetheless went ahead with the merger. As a board member, Kaiser favored the deal, and even defended it six years later. "It was very important for Bank of Oklahoma to have a franchise in Oklahoma City," he told the *Tulsa World*. "It was the only franchise realistically available without starting from scratch and I think the idea was fine."

That fine idea nearly ruined the bank. After posting a $51 million loss in the second quarter of 1986, the Bank of Oklahoma turned to the Federal Deposit Insurance Corporation for a bailout. Rather than close the bank, the FDIC kept it afloat through a program called Open Bank Assistance; only those banks deemed "essential" to their communities qualified. In exchange for 55 percent of the stock of the bank's holding company, the FDIC pumped $130 million into the institution. Stockholders like Kaiser lost most of their investment in Fidelity. But the FDIC left the board and management in place to administer the bailout.

Other Oklahoma institutions weren't so lucky. No one considered them "essential" to the community. By 1994, more than a dozen years after the bust began, 162 of the state's banks and savings and loans had closed their doors—a financial debacle that cost taxpayers, who bailed out depositors, more than $4 billion. Oil and gas producers laid off workers or went bankrupt, as did the companies dependent on their business. For them, there was no taxpayer-financed bailout.

In March and April 1986, Demco, Incorporated, an Oklahoma City–based manufacturer of oil and gas drilling equipment, laid off 98 of its 400 workers. Halliburton Company cut 550 jobs in the first six months of that year at its Duncan, Oklahoma, factories; overall, the oil field services company's employment in Duncan declined from 4,000 in early 1982 to 2,200 in 1986. Philips Petroleum Company, a worldwide oil producer headquartered in Bartlesville, Oklahoma, slashed its workforce there by a sixth; 1,000 of the 6,000 employees who worked in the company's hometown were left without paychecks.

There were record numbers of bankruptcies as well: Seneca Oil Company; Waterford Energy, Incorporated; and MGF Oil Corporation, to name a few. Kaiser picked up all three from various bankruptcy courts and added them to Kaiser-Francis Oil's empire. Just as he had sold off oil properties at peak prices during the boom, Kaiser was acquiring them at bargain-basement prices during the bust.

Other companies disappeared entirely. Colin Schmidt worked for eighteen years as a systems analyst for the Tulsa-based Bovaird Supply Company, another oil field services supplier. The company, founded in 1871, weathered over a century of ups and downs in the oil industry. At its peak in 1982, Bovaird Supply employed 820 workers. Then the bust came. Schmidt still remembers the day in June 1983 when the first job cuts were announced. "They went from department to department, reading a list of names and laying people off," Schmidt recalled. "In my department, we thought, 'They can't lay us off. They need this new system so they can do their job better.' But they came in and laid off people in my department too."

By the end of 1994, Bovaird's payroll had dropped to 250. Oil production in Oklahoma had fallen off so much that the company tried to survive by selling its wares in Russia. "They had the same problem everyone else in Russia did," Schmidt said. "Getting paid."

In January 1996, after 124 years and five generations of Bovairds running the company, the family sold what little remained of the failing business to Continental Emsco Company, another oil field supplier. The new owners promptly closed the doors of Bovaird Supply's Tulsa headquarters, a move that put the last sixteen employees—including Colin Schmidt—out of work.

The job losses at Bovaird Supply were hardly unique. In 1998, State Representative Russ Roach, a Democrat from Tulsa, reported that 108,000 jobs disappeared in Oklahoma from 1982 to 1988. Those jobs were primarily in the high-paying oil and gas industries; they were replaced, for the most part, by low-paying service jobs. Oklahoma's

per capita income in 1982 was slightly below the national average, but has since plummeted. In 1998, the finance office of Republican governor Frank Keating noted that "Oklahomans receive an average of 80 cents for every $1 received nationally. Regrettably, this is only half the story. These numbers conceal the fact that the average is even worse in the state's rural areas."

"There was terrible pain for a long time," recalled Charles Cheatham, of the Oklahoma Bank Association. "We had a deflationary economy. Our gross state product decreased, tax revenues decreased, and the value of real estate decreased. The average home decreased in value by 30 percent. There are still people after fifteen years of this with negative equity in their homes."

The Bank of Oklahoma, however, did fairly well. In 1987, thanks to the FDIC bailout, it was able to acquire two more banks, one in Yukon and the other in Norman, expanding its reach through the state. By 1989, the FDIC had the Bank of Oklahoma back on its feet: it recorded a modest profit that year of $3.8 million. The FDIC was ready to return the bank to private hands, and put it up for sale.

All but one of the bidders came from out of state: Kaiser, who held the inside track. Not only did the native son serve on the bank's board of directors but on the audit committee as well, and therefore was intimately familiar with the bank's loans—both good and bad. Kaiser's bid wasn't the highest, but unlike his competitors, he didn't ask the FDIC to bail out any of the bad loans still on the bank's books. In the end, Kaiser's inside track proved fruitful: he paid just under $61 million for a bank that the FDIC had bought four years earlier for $130 million. What's more, the Bank of Oklahoma was losing millions when the FDIC stepped in, but was now turning a profit.

"I never wanted to be a banker," Kaiser told the Center. "Oklahoma is a state that can't be banked by Chase Manhattan. We need relationship banking or community banking. I was concerned that that style of banking would disappear with all the bank consolidation. And really it has, except for us."

Following his successful bid, Kaiser immediately pledged to aggres-

sively finance local business expansion, to provide loans and capital to his fellow Sooners, and to raise the bank's profile in charitable events and community causes. He was proclaimed a "favorite son" for rescuing the Tulsa-based bank and keeping it in hometown hands. "Really, my consideration here is, first of all, the critical necessity for Oklahoma to have a home-owned, home-controlled financial institution," he told the *Tulsa World* in an October 1990 interview. "That sounds a bit holy, but generally, that's the personal motivation. But it will be a profitable transaction as well."

That was putting it lightly. By the end of 1998, Kaiser's shares of BOK Financial (the holding company that owns the bank) were worth nearly $917 million, fifteen times what he paid for them. Kaiser's strike is even more phenomenal considering that, when he bought the shares, he claimed he had no income. At the same time Kaiser was buying the Bank of Oklahoma from one part of the federal government, the FDIC, he was telling another part, the Internal Revenue Service, that he wasn't paying any income taxes because he had lost money that year.

Kaiser paid for the bank in 1991—a year in which he filed a federal income tax return declaring a total taxable income of negative $2,328,639. The previous year, when Kaiser made his successful $61 million bid to buy the bank, he declared a loss of $115,561. Kaiser's total income tax payments those years: zero.

In 1989, Kaiser actually had some earnings. He filed a tax return showing total taxable income of $11,699—equal to an hourly wage of $5.62. For the record, the average hourly wage for nonsupervisory bank employees—tellers, security guards, janitors, and the like—was $8.13 in 1989, or $2.51 more an hour than Kaiser, the future bank owner, claimed he earned. Kaiser paid $2,688 in federal income taxes that year.

In the three prior years, from 1986 to 1988, Kaiser declared losses as well. Over the six years from 1986 to 1991, Kaiser's average annual income was negative $860,000. But before taking up a collection for the George B. Kaiser Relief Fund, remember that in 1992, his net

worth landed him on the *Forbes* list of the 400 wealthiest Americans, where he has remained ever since.

His purchase of the Bank of Oklahoma the year before had a lot to do with his landing on the list. In 1991, the Tulsa oilman received more than $100 million from an entity known as GBK Corporation. Following an audit, the IRS suggested that the entire amount was dividend income. On the heels of the audit, the Service questioned the validity of various deductions and losses Kaiser and his wife claimed. In fact, the IRS sent the couple a Notice of Deficiency in 1997 for $48.6 million for back taxes, interest, and penalties.

The Kaisers, maintaining that they owed no additional taxes, contested the IRS's findings in U.S. Tax Court. Kaiser told the IRS that the $100 million he received from GBK was not a dividend, but a loan. He had paid interest on the amount, he noted—a staggering $3.3 million in 1991 alone. "They dropped it immediately," Kaiser said of the IRS's position on the loan. "There was no issue. The Internal Revenue Service on occasion will raise spurious issues to increase its leverage." After negotiating with IRS attorneys, the Kaisers settled the case for substantially less than the government initially sought: they sent the government a check for $11,891.

From 1989 to 1991, Kaiser's average annual tax burden rose—thanks to the settlement with the IRS—to $4,860 a year. That's less than the amount that a married couple with an income of $41,140 would pay. If that couple saved every penny of their annual income, it would take them more than 22,000 years to accumulate the $917 million that Kaiser made from his investment in the Bank of Oklahoma.

That couple could afford to borrow $151,000 to buy a home. Kaiser was able to persuade GBK to loan more than 650 times that amount to buy the Bank of Oklahoma. That's because GBK stands for George B. Kaiser.

GBK Corporation is a holding company whose principal asset is Kaiser-Francis Oil. In his role as president, chairman, and sole director of GBK, Kaiser loaned himself the $100 million to buy the Bank of Oklahoma. Kaiser was able to satisfy the IRS that the money was indeed

borrowed, and not a dividend from his company, as the Service initially contended. "There are about eleven things you have to show to disprove that, and the only one I didn't have was the corporate minutes," he told the Center. "I'm the only director and I hold all the directors' meetings in the shower. I don't take minutes because the ink runs."

Because Kaiser is paying back the money he borrowed from his company, he can even deduct the $3.3 million he paid in interest to GBK from his personal income taxes. It's called investment interest expense, and it's fully deductible under the Internal Revenue Code.

As for GBK, which had enough spare cash to make a $100 million loan, its returns showed losses almost as prodigious as Kaiser's. From 1986 to 1992, GBK filed returns claiming $507,000 in red ink. Some years the company had income and paid taxes; other years, it claimed losses and paid nothing. And some of those losses came from firms that had nothing to do with GBK, Kaiser-Francis Oil, or George Kaiser. Instead, the losses were attributed to those bankrupt companies that Kaiser bought up during the bust—firms like MGF Oil and Waterford Energy, which had more to offer Kaiser than a chance to boost his gas production.

Waterford Energy operated roughly 150 gas wells in Beaver County, Oklahoma. Like many other independent oil and gas companies, it borrowed heavily during the boom and suffered huge losses during the bust. When it ended up in bankruptcy court in 1990, it had about $7 million in assets, and something far more valuable on paper. Waterford possessed $151 million in losses the company had racked up over the years. Those huge losses that Waterford suffered in the 1980s wound up as huge write-offs on the tax returns of GBK Corporation in the 1990s.

In 1992, Kaiser erased a $40 million profit made by his GBK Corporation because Waterford Energy lost millions in the 1980s. GBK can continue to apply those Waterford losses to its tax returns until 2005. By using the net operating losses of bankrupt companies like Waterford or MGF Oil, another company whose tax benefits Kaiser enjoyed, he turned the profits of Kaiser-Francis Oil into paper losses on his tax returns.

The oil bust, with all its business failures and bankrupted energy producers, provided Kaiser the perfect opportunity to use net operating losses to lower his tax burden. In 1997, the IRS challenged the Waterford write-off, arguing that "losses resulting from acquisitions made to evade or avoid income tax are prohibited." Like Kaiser, GBK received a large bill from the IRS—this one for more than $24 million including interest and penalties—covering 1989 to 1992. And like Kaiser, GBK contested the charges. The company argued, for example, that it "acquired Waterford for sound business reasons; the acquisition was not made for the principal purpose of evading or avoiding federal income taxes."

"We acquire oil and gas companies and properties all the time because we're in the business of acquiring hydrocarbon reserves," Kaiser said of the Waterford purchase. "During the desperate depression of the 1980s, there were no oil and gas companies without net operating losses. Any company you'd buy had them. There was no indication that we didn't comply with the Internal Revenue rules."

Kaiser carefully complied with the rules, in part to preserve the net operating losses he used so shrewdly. Waterford filed a plan of reorganization in the U.S. Bankruptcy Court for the Southern District of Texas on November 7, 1990. The filing laid out the steps that the company, which was soon to be managed by Kaiser and a group of his executives, would take to get the company out of debt and satisfy creditors. "The principal motivations of the plan are to reorganize the debtor . . . to meet its obligations as they mature and to preserve the tax attributes of the debtor in order to allow the debtor to realize the benefits of the tax attributes, including net operating losses." Once Kaiser took control of Waterford, his company would enjoy the "benefits of the tax attributes" of the debtor.

A November 27, 1989, letter that D. Joseph Graham, the chief financial officer of Kaiser-Francis Oil, wrote to Steven Ensz, then president of Waterford Energy, was even more specific about the company's interest in the acquisition. "I apologize for taking so long to get

back to you on the Waterford Energy, Inc. offer," the letter began. "I have been spending almost all of my time on the purchase of another oil and gas company, which, coincidentally, also has very significant tax attributes, and have just now been able to return my attention to Waterford. Although our appetite for an acquisition of this nature is somewhat relieved by the other opportunity, we are still interested in trying to reach an agreement on Waterford. . . ."

Kaiser's appetite for acquisitions with "significant tax attributes" wasn't entirely relieved by the purchase of that other oil and gas company: in 1990, he took over Waterford; in 1991, he merged Waterford with Kaiser-Francis Oil and claimed Waterford's net operating losses on GBK's tax return.

In 1998, the IRS finally settled the case with GBK Corporation, without going to trial, for $3.7 million—or roughly 15 cents on the dollar. The IRS refused comment on the settlement, citing the confidentiality of taxpayer information. The Service allowed the deductions for the Waterford losses to stand.

George Kaiser once remarked to *Forbes*, in a comment he would probably like to take back, that "Gas is the only commodity you can legally steal." A class action suit filed in Oklahoma state court accused Waterford and its new owner, Kaiser-Francis Oil, of doing just that. The suit charges that Kaiser's companies participated in "a scheme which resulted in the systematic underpayment of royalties to royalty owners" of the wells that Waterford, and later Kaiser-Francis, operated.

Two years before Kaiser's company took over Waterford, a royalty owner, Robert A. Funk, had sued the company for $3.4 million. Funk claimed that Waterford was paying him less than he was owed for the gas the company was pumping out of his land. Funk was familiar with the oil and gas business; as president of Funk Exploration, Inc., he was another Sooner who rode the energy boom. His company built the Beaver Gathering System, a pipeline that transported gas in the panhandle of Oklahoma. Funk Exploration got huge loans from banks in

the early 1980s: $20 million from Wells Fargo Bank, a $200 million line of credit from Marine Midland Bank, and a $500 million line of credit from Chemical Bank. He saddled his company with so much debt that, when the bust came, he couldn't repay his loans. In 1985, Chemical Bank forced him out, reorganized the company, and renamed it Waterford Energy.

When Funk set up the Beaver Gathering System, he also instituted a scheme to secretly charge royalty owners an inflated "transportation fee" for pumping gas from their land. Funk didn't mind paying the fee himself, because much of that money ended up in his own pocket (part of the profits Funk Exploration earned). But after he turned over control of the company to Chemical Bank, he was getting cheated just like the other royalty owners in Beaver County. So Funk sued Waterford in 1988.

"I am not being paid as a lease instructs to be paid," Funk told attorneys for Waterford in a 1989 deposition. "I should get gross proceeds, [there] should not be any transportation deducted." Funk further complained that his royalty check did not indicate that Waterford had deducted any fee from it. When asked by Waterford's attorneys whether he knew of the fee because he was the one who instituted it, Funk answered yes.

Kaiser told the Center that "We prefer picking up bankrupt companies because you know all the liabilities." Yet he wasn't aware of Funk's scheme until after he had filed the bankruptcy reorganization plan. He didn't schedule the claims of other royalty owners. He discovered Funk's transportation fees when Jack and Verdeen Slatten, two other royalty owners in the Beaver Gathering System, sued Kaiser-Francis Oil. Kaiser settled with them out of court for $25,000 and a promise that they wouldn't disclose the terms of the settlement to anyone else.

Eventually, other royalty owners—some 1,300 of them—found out about the fees. In 1995, they filed a class action suit in Beaver County District Court, alleging that they'd been underpaid some $35 million by Waterford Energy and its successor, Kaiser-Francis Oil. The suit

alleges that Kaiser-Francis Oil continued to collect the transportation fee, year after year, long after the Slattens' lawsuit exposed the scheme. The average claim was $17,750; Galen Bridenstine, the royalty owner chosen to represent the class, claimed he was out a little less than $9,000.

Attorneys for Kaiser-Francis Oil argued that Kaiser was not aware of Funk's scheme, and in any case, those claims were barred by the statute of limitations. They filed a motion in bankruptcy court, arguing that Waterford's bankruptcy eliminated any claims prior to Kaiser-Francis Oil's taking over the company. They vigorously denied that the company engaged in any scheme that paid royalty owners less than they were owed. And they attempted to prevent the royalty owners from suing as a class. After five years of litigation, the royalty owners, as of this writing, have yet to get their day in Oklahoma's courts. The trial, scheduled for May 1999, was pushed back to March 2000, then delayed again.

Kaiser told the Center that the suit is groundless. "We were disadvantaged as well," he said. "If the fee for the pipeline is excessive, then we are hurt too. If the pipeline's overcharging, we're overcharged. I don't think anybody is an appropriate plaintiff in this case."

The Waterford royalty owners aren't the only Oklahomans who have claimed that Kaiser's companies have legally stolen from them. A group of landowners in Grady County, in the south-central part of the state, have also alleged that Kaiser-Francis Oil has paid them less than they're owed for the gas the company drains from their property.

Glenn Mayo, whose elderly mother, Murlene, is one of the plaintiffs, told the Center, "When the price of gas was up to $3.50 per thousand cubic feet, they paid 16 to 22 cents on it." Royalty owners are supposed to get one-eighth of the sale price on the gas—almost 44 cents at a price of $3.50. "You can see how much money you're losing," Mayo said.

Over the years, that lost money has added up to about $10,000. Not a fortune by any means, but as Glenn Mayo says of his mother,

"When you're old, and you depend on Social Security, every little bit helps."

Mayo isn't optimistic that his mother will ever recover the money, despite being a participant in a lawsuit that was filed in 1993. "My mom's eighty-six, and it's unlikely she'll see any benefit out of it. My grandpa didn't see any, my dad didn't see any, so I guess it's an ongoing thing."

"I've probably been around the oil and gas business for about twenty years and have never heard of anything like this," Richard Allen, the attorney representing Mayo, said. He filed the 1993 lawsuit on behalf of her and thirty other landowners in Grady County. The attorney spent hundreds of hours in the arduous task of unraveling Kaiser's empire, studying leases and sales records and royalty payments.

"Kaiser-Francis owns a few buildings up in Tulsa and you walk in and there's 500 different corporations in those buildings," said Allen. "Those people that I deposed might be the vice president of twenty different companies, all of them owned by Kaiser and his family."

One of those companies, Texas Southwest Gas Corporation, buys gas from Kaiser-Francis Oil for far less than the market price, the suit alleged. The gas is pumped from land owned by Murlene Mayo and the other Grady County royalty owners, who receive their percentage on those Kaiser-Francis sales. Texas Southwest Gas then resells the gas for full price on the open market. The difference in price ends up in George Kaiser's pocket.

"We've run the records and we know what Kaiser-Francis made out of these wells," Allen said. "We've got how much they paid the royalty owners. They admit that they're selling to themselves. They're saying, 'We can get around the law and do this.' "

Kaiser and his lawyers aren't eager to find out if a judge would agree with them. Instead, they challenged the right of Allen's clients to sue as a class of similarly aggrieved plaintiffs. They won the first round in a trial court, and in February 1998, the civil appeals court of Oklahoma upheld the trial court's refusal to certify Allen's clients as a class. The majority held that because Kaiser-Francis Oil had different types

of agreements with the various royalty owners, the plaintiffs did not have enough in common to be considered a class. The majority noted, however, that the plaintiffs could pursue their cases individually.

Should Allen's clients sue separately, each would have to pay attorney fees and court costs to recover amounts in some cases as little as a few thousand dollars. "These are people that don't have much income and I'm finding out they've only been paid a tenth of what they're due," Allen said. "The problem is, how can a person getting a hundred-dollar royalty check challenge a person like Kaiser and his lawyers?"

Kaiser, after all, is one of the 400 wealthiest Americans. In 1995, he used some of that money to push the Oklahoma legislature to pass a bill that would limit punitive damages to $100,000. Kaiser wanted to make it harder for ordinary Oklahomans to sue powerful companies. When the legislature balked, Kaiser helped raise $2 million to get tort reform passed as a ballot initiative. Governor Frank Keating threatened to veto a banking bill if it didn't include Kaiser's tort-reform package. Oklahoma's elected representatives bowed to the pressure. Keating remarked at the time that the bill passed thanks to "a very real fear of my veto and George Kaiser's money."

The oilman believes he did the state a service. "The U.S. civil legal system is fatally flawed," he said.

Tort reform isn't the only business-friendly measure to come from the Oklahoma statehouse. As elected officials have struggled with the implications of the oil bust, they've crafted a number of programs to attract businesses to the state. Keating has called for right-to-work laws, aimed at restricting the activities of labor unions, and reform of the state's worker compensation system.

And in 1993, the legislature passed the Quality Jobs Program Act, aimed at attracting companies to the state by offering to pay 5 percent of the wages for new jobs created there for up to ten years. The purpose of the bill was to help Oklahoma recover from the oil bust. The list of companies that have taken advantage of the program reads like a who's who of the *Fortune* 500—Boeing, AT&T, Mutual of Omaha, Hertz Corporation, Amoco Corporation, and Seagate Technology, to

name a few. Some of the wealthiest corporations in the country get a rebate from ordinary Oklahoma taxpayers, whose incomes are already, on average, among the lowest in the country. Or, as the state's finance office put it, "[T]he Quality Jobs program, an economic development incentive, is placing an increasing demand on income tax revenues."

While ordinary taxpayers might be footing the bill for the Quality Jobs program, to date it hasn't made much of a difference for the average Sooner. Six years after it was enacted, the state's per capita income remained among the lowest in the nation. "The problem in our state," the finance office reported in 1998, "is that we have plenty of jobs, they just pay relatively low wages." Layoffs are still common in the oil industry. In January 1999, Governor Keating called for an emergency session of the legislature to address the plight of Oklahoma's oil and gas producers.

One business, however, has done very well. The same month Keating called for the emergency session, the Bank of Oklahoma announced that it had record earnings in the previous year. George Kaiser believes that the profits he earns from the bank are all to the good of his fellow Sooners. "I guess the image we're seeking as a bank is an Oklahoma-based company which wants to be deeply involved in the restoration of the Oklahoma economy," Kaiser told the *Sunday Oklahoman* in June 1992. While that restoration for the rest of the state has been slow in coming, it hasn't prevented Kaiser's bank from enjoying a boom of its own.

He doubled its profitability in his first year as chairman and boosted commercial, real estate, and consumer loan business by 20 percent or more in each category. He expanded in the Tulsa area by buying nineteen branches of the Sooner Federal Savings & Loan in 1992. He bought a mortgage company from the Resolution Trust Corporation, the government entity charged with cleaning up the savings and loan mess, to further expand the bank's presence in real estate lending. "We've been one of the most dynamic banks in the market-

place," Kaiser boasted to *American Banker*, the trade magazine for savings institutions, in a September 1992 interview.

Year after year, the bank has issued glowing earnings reports. By the time it issued its 1998 annual report, Kaiser decided to extend the bank's reach beyond his home state. "Over the past several years, we have succeeded in building the Bank of Oklahoma into a position of dominance in our home state," the report read. "The challenge we face is strengthening that position while expanding into surrounding states. . . ." Those states include Texas, New Mexico, and Arkansas. Kaiser's BOK Financial has acquired banks in all three.

There was just one dark cloud hanging over the Bank of Oklahoma's sunny future. The IRS was auditing the bank, a fact also disclosed in the company's annual reports. Unlike other parts of Kaiser's empire, the bank paid taxes—although its effective tax rate ranged between 20 percent and 33 percent in the years after Kaiser bought it, always less than the 34 percent corporate tax rate.

In 1999, the company announced the result of the audits. "During 1998, Internal Revenue Service examinations for 1994 and 1995 were closed with no significant adjustments. During 1997, the Internal Revenue Service closed its examination of [the Bank of Oklahoma] and BOK Financial for 1992 and 1993, respectively. As a result of the outcome of these examinations, BOK Financial realized a $9.0 million tax allowance that was no longer needed."

Like Kaiser and his company, the bank had complied with the Internal Revenue Code and satisfied the auditors. Once again, the IRS cleared Kaiser.