

On or about January 21, 2003, Scherer entered into an agreement entitled "Class II Equipment Revenue Share Agreement" (Class II Agreement) with the Kaw Nation of Oklahoma (Kaw Nation).

The Class II Agreement provided that SCL would supply eighty (80) gaming machines to the Kaw Nation gaming facility (Kaw Nation Casino) for a term of five (5) years, beginning when the machines were fully operational to the public. The Class II Agreement provided that SCL would provide a temporary structure to house the gaming machines and pay a pro-rata share of the costs of maintenance, accounting services, liability insurance, and electricity. Further, the Class II Agreement required the parties to obtain any required regulatory approval and to abide by the laws, regulations, rules, and requirements of governmental and tribal authorities. In return, SCL would receive thirty percent (30%) of the net pay out revenue generated by the gaming machines with the Kaw Nation to receive the remaining seventy percent (70%). The Class II Agreement stated that SCL was capable, ready, and committed to proceed immediately.

Count One

OFFER AND SALE OF UNREGISTERED SECURITY 71 O.S. § 301

On or about February 18, 2003, the crime of Offer and/or Sale of an Unregistered Security was feloniously committed in Kay County, Oklahoma, by Scherer who did offer for sale and did sell to Al Eggermont, Rick Brownlee, Richard Hawkins, Don Delang, Perry Hintz, and Randy Viessman, doing business as the Brownlee Group, a certain unregistered security, to wit: an income sharing investment entitled "Class II Equipment Revenue Participation Agreement," in the net revenues to be received by SCL from the Class II Agreement with the Kaw Nation. The Class II Equipment Revenue Participation Agreement offered and sold by Scherer was not registered under the Oklahoma Securities Act (Act), Okla. Stat. Ann. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003).

This crime is punishable by up to Ten (10) years imprisonment and/or a fine of \$10,000.

Count Two

OFFER AND SALE OF A SECURITY BY AN UNREGISTERED AGENT 71 O.S. § 201

On or about February 18, 2003, the crime of Offer and/or Sale of a Security by an Unregistered Agent was feloniously committed in Kay County, Oklahoma, by Scherer who did transact business in connection with the offer and/or sale of a security without registration as an agent as required by 71 O.S. § 201(a)(1).

This crime is punishable by up to Ten (10) years imprisonment and/or a fine of \$10,000.

Count Three

OFFER AND SALE OF UNREGISTERED SECURITY 71 O.S. § 301

On or about March 19, 2003, the crime of Offer and/or Sale of an Unregistered Security was feloniously committed in Kay County, Oklahoma, by Scherer who did offer for sale and did sell to Roger Peavey (Peavey) and Robert Traynor (Traynor), doing business as Roger Peavey and Associates, a certain unregistered security, to wit: an income sharing investment entitled "Class II Equipment Revenue Participation Agreement," in the net revenues to be received by SCL from the Class II Agreement with the Kaw Nation. The Class II Equipment Revenue Participation Agreement offered and sold by Scherer was not registered under the Act.

This crime is punishable by up to Ten (10) years imprisonment and/or a fine of \$10,000.

Count Four

OFFER AND SALE OF A SECURITY BY AN UNREGISTERED AGENT 71 O.S. § 201

On or about March 19, 2003, the crime of Offer and/or Sale of a Security by an Unregistered Agent was feloniously committed in Kay County, Oklahoma, by Scherer who did transact business in connection with the offer and/or sale of a security without registration as an agent as required by 71 O.S. § 201(a)(1).

This crime is punishable by up to Ten (10) years imprisonment and/or a fine of \$10,000.

Count Five

OFFER AND SALE OF UNREGISTERED SECURITY 71 O.S. § 301

On or about April 22, 2003, the crime of Offer and/or Sale of an Unregistered Security was feloniously committed in Kay County, Oklahoma, by Scherer who did offer for sale and did sell to Peavey, a certain unregistered security, to wit: an income sharing investment entitled "Class II Equipment Revenue Participation Agreement," in the net revenues to be received by SCL from the Class II Agreement with the Kaw Nation. The Class II Equipment Revenue Participation Agreement offered and sold by Scherer was not registered under the Act.

This crime is punishable by up to Ten (10) years imprisonment and/or a fine of \$10,000.

Count Six

OFFER AND SALE OF A SECURITY BY AN UNREGISTERED AGENT 71 O.S. § 201

On or about April 22, 2003, the crime of Offer and/or Sale of a Security by an Unregistered Agent was feloniously committed in Kay County, Oklahoma, by Scherer

who did transact business in connection with the offer and/or sale of a security without registration as an agent as required by 71 O.S. § 201(a)(1).

This crime is punishable by up to Ten (10) years imprisonment and/or a fine of \$10,000.

Count Seven

FRAUD IN CONNECTION WITH THE OFFER AND/OR SALE OF A SECURITY 71 O.S. § 101

On or about March 19, 2003, the crime of Fraud in Connection with the Offer and/or Sale of a Security, was feloniously committed in Kay County, Oklahoma, by Scherer who did offer for sale and did sell to Peavey and Traynor, a certain unregistered security, to wit: an income sharing investment entitled "Class II Equipment Revenue Participation Agreement," in the net revenues to be received by SCL from the Class II Agreement with the Kaw Nation, an interest in said security and in doing so willfully and wrongfully engaged in some or all of the following acts, practices, or courses of business which would and did operate as a fraud or deceit upon Peavey and Traynor:

Scherer, provided Peavey and Robert with a copy of the Class II Agreement, dated January 21, 2003, between Scherer and the Kaw Nation; and

Scherer took Peavey and Traynor to the Kaw Nation Casino to show them the facility where the gaming machines would be placed and told them he was seeking investors to finance the purchase of Class II gaming machines that he would place at the Kaw Nation Casino; and

Scherer did not place Class II gaming machines at the Kaw Nation Casino, but instead, placed Class III gaming machines at the Kaw Nation Casino. The placement of Class III gaming machines at the Kaw Nation Casino violated state, federal, and tribal laws and regulations; and

The gaming machines that Scherer placed at the Kaw Nation Casino contained identification markings that had been altered, removed, and/or obliterated. The alteration, removal, and/or obliteration of the identification markings on the gaming machines violated federal law.

In furtherance of this scheme to defraud investors, Scherer made the following untrue statements of material facts to Peavey and Traynor:

That the funds obtained from Peavey and Traynor would be used for the purchase of Class II gaming machines, when in fact, the investment funds were used to finance the operation of other unrelated activities and for the personal benefit of Scherer; and

That Peavey and Traynor could expect revenue payments from the gaming machines to begin shortly after the receipt by Scherer of their investment funds. Peavey and Traynor have not received any payments from Scherer.

In furtherance of this scheme to defraud investors, Scherer omitted to state the following material fact in order to make the statements made, in light of the circumstances under which they were made, not misleading:

That the Class II Equipment Revenue Participation Agreement sold to Peavey and Traynor were not registered under the Act; and

That Peavey's and Traynor's funds would be used to finance the operation of other unrelated activities and for the personal benefit of Scherer.

This crime is punishable by up to Ten (10) years imprisonment and/or a fine of \$10,000.

Mark L. Gibson
District Attorney

By: Philip A. Bass
Assistant District Attorney

DEC 15 2004

GLEND A EMERSON, Court Clerk

I, Lori Bynum, being duly sworn, depose and state as follows: ~~BY~~ DEPUTY

1. I am an investigator with the Oklahoma Department of Securities (ODS). I have been so employed by ODS for approximately two (2) years. Prior to employment with ODS, I was a financial analyst with the Federal Bureau of Investigation (FBI), and was assigned to criminal investigations involving white-collar criminal activities.

2. I have conducted an investigation into the activities of Charles Scherer (Scherer) and Southern Cross Ltd. (SCL). Scherer is the president and owner of SCL.

3. SCL maintains addresses in Ponca City, Oklahoma, and Wrightwood, California. SCL purportedly owns, operates, and distributes proprietary electronic video gaming equipment, including software, to participating locations on Native American lands.

4. Beginning as early as December 2002, Scherer began offering opportunities to invest in certain gaming machines to be located at the Kaw Nation gaming facility (Kaw Nation Casino) in Newkirk, Kay County, Oklahoma. The investment opportunity allowed for investors to receive a percentage of the revenue generated from certain Class II gaming machines located at Kaw Nation Casino.

5. In or about January 2003, Scherer presented a document entitled "Class II Equipment Revenue Share Agreement" ("Class II Agreement") to the Chairman of the Kaw Nation of Oklahoma (Kaw Nation). The proposed parties to the Class II Agreement were the Kaw Nation and SCL.

6. The Class II Agreement provided that SCL would supply 80 gaming machines to the Kaw Nation Casino. The term of the Class II Agreement was for five (5) years, beginning when the machines were fully operational to the public. The Class II Agreement provided that SCL would provide a temporary structure to house the gaming machines and pay a pro-rata share of the costs of maintenance, accounting services, liability insurance, and electricity. Further, the Class II Agreement required the parties to obtain any required regulatory approval and to abide by the laws, regulations, rules, and requirements of governmental and tribal authorities. In return, SCL would receive thirty percent (30%) of the pay out revenue generated by the gaming machines, with the Kaw Nation to receive the remaining seventy-percent (70%). The Class II Agreement stated that SCL was capable, ready and committed to proceed immediately.

7. On January 21, 2003, the Chairman of the Kaw Nation signed the Class II Agreement on behalf of the tribe.

8. Scherer opened a bank account in the name of SCL on January 29, 2003 (SCL Account). This account is maintained at Eastman National Bank in Newkirk, Oklahoma. Scherer is the only individual with signatory authority on the account.

9. A deposit of \$50,000 was received into the SCL bank account via wire transfer on February 13, 2003. The wire transfer was sent by A. Eggermont, on behalf of the Brownlee Group, for the purpose of investing in certain Class II gaming machines to be located at Kaw Nation Casino.

10. On or about March 19, 2003, R. Peavey and R. Traynor, residents of Wisconsin, entered into a Revenue Participation Agreement with SCL. Peavey and Traynor agreed to invest \$125,000 for a twenty percent (20%) participation in the net revenues received by SCL from certain Class II gaming machines.

11. A deposit of \$50,000 was received into the SCL Account via wire transfer on March 25, 2003. The wire transfer was sent by Traynor for the purpose of investing \$25,000 in certain Class II gaming machines to be located at Kaw Nation Casino and \$25,000 to be held in escrow for a similar project involving the Apache Tribe.

12. A deposit of \$100,000 was received into the SCL Account via wire transfer on March 2, 2003. The wire transfer was sent by Peavey for the purpose of investing in certain Class II gaming machines to be located at Kaw Nation Casino.

13. A deposit of \$80,000 was received into the SCL Account via check on April 23, 2003. The check was sent by Peavey for the purpose of investing in certain Class II gaming machines to be located at Kaw Nation Casino.

14. The funds invested by Eggermont, Peavey and Traynor were not used to purchase Class II gaming machines as represented by Scherer. In addition, Scherer failed to escrow the \$25,000 received from Traynor for the Apache Tribe project. Further, a portion of the invested funds was used to pay Scherer's personal expenses.

15. The Class II gaming machines installed by Scherer at the Kaw Nation Casino were Class III gaming machines rather than Class II gaming machines. The placement of Class III machines at the Kaw Nation Casino violated federal, state and tribal regulations. Furthermore, the machines were not adequately identified as required under federal law.

16. Scherer offered and sold investment opportunities in and/or from the State of Oklahoma without being registered as a broker-dealer or agent under the Oklahoma Securities Act, Okla. Stat. tit. 71, §§ 1-413, 501, 701-703 (2001 and Supp. 2003).

17. The investment opportunities offered and sold by Scherer were not registered under the Oklahoma Securities Act.

18. On May 20, 2003, the Kaw Nation's tribal attorney advised Scherer that the Class II Agreement was void due to apparent violations of Kaw Nation gaming regulations and violations of federal law. Scherer was ordered to remove the machines from the Kaw Nation Casino within five (5) days.

19. In about August 2003, Peavey and Traynor met with Scherer to discuss the revenue sharing investments. During this meeting, Peavey and Traynor requested the return of their investment money. Scherer refused to return the money, but instead, offered to put Peavey and Traynor into other investments. Peavey and Traynor declined this offer. Scherer also told Traynor that he would not return the \$25,000 that was to be set aside in escrow for the Apache Tribe project.

20. Traynor, G. Peavey (Peavey's spouse), and Eggermont have made repeated attempts to contact Scherer. Scherer has refused to communicate and no refunds or revenue sharing payments from the investments have been distributed by Scherer.

DATED this 28th day of October, 2004.


Lori Bynum

Subscribed and sworn to before me this 28th day of October, 2004.

(NOTORIAL SEAL)


Brenda Gordon Smith
Notary Public

My Commission Expires: August 26, 2005
My Commission Number: 01013792