

TRANSCRIPT (12)

MR. COLE: ...he [Leaders] wanted to talk about that and I said ok. So we then scheduled the meeting for June 2004. We did that in my office. The trooper came -um- before that in a conversation with Scot Leaders I had asked him -um- 'you know is - you're not goanna use my clients statement later on?' I mean I - I - I truthfully I never thought there would be a later one because the only thing I could see is that we were goanna negotiate this. I had told that to David 'you know you can't once you make that decision to make a statement it's very - very difficult to go back' -um- but before it I had - I'd asked Leaders about that and -um- he said it - that was his understanding. I didn't put it in writing. I - you know that was - that was a mistake of mine. I should have said it at the -uh- at the meeting but -uh- again I never ever expected that there was goanna be anything happen besides a negotiated deal with that and I told that to David time and time again.¹

MS. SHAW: So what was the -um- understanding that you had as Mr. Haeg went into this -um- conversation where he provided information to the prosecutors?

MR. COLE: We were - we were falling on our sword. Ok. It was a deal that his statement would not be used against him - kind of a king for a day. We were [f]...

MS. SHAW: It was a deal? That was the deal?

MR. COLE: That was my understanding, yeah. There - there was no deal as far as what the sentence would be or what the outcome would be.

MS. SHAW: There was at least some kind of informal use immunity for the statement?

¹ Tr. Fee Arbitration p. 248-249.

MR. COLE: Right and I - and I documented that in a letter that I sent to Leaders later on. But that was my understanding at the time, yes. And that if we even wanted to stock - you know to talk deal - to - to have the opportunity to avoid the 5-year loss of license you know this is what we had to do. We had to step up and be truthful about our involvement in the - in these criminal activities.²

MS. SHAW: Let me ask you a question while you're...

MR. COLE: Yep.

MS. SHAW: ...collecting yourself. -Um- was there a discussion, with Mr. Leaders, let's say in the October - November and even later period, while you were still representing Mr. Haeg, about whether or not he proposed to use Mr. Haeg's interview against him - either at trial or at - at a sentencing hearing after -uh- pursuant to a plea agreement?

MR. COLE: When I came on board or no - when Mr. Robinson came on board...

MS. SHAW: Umm hmm.

MR. COLE: ...one of the things he asked me was 'hey -uh- Leaders is talking about using his sent - his statement' and I said well he can't - we agreed - he and I agreed before this that it wasn't goanna be used. That it was just goanna be - I don't know whatever you want to call it - a king for a day or a immunity statement. So he said, 'well will you write a letter to that affect?' And I said, 'sure I will' because I remembered the conversation I had with Scot and that's why I wrote the letter I did in December and that's specifically why. It was at the direction of Mr. Robinson, it was what I understood to be the - the arrangement that we had -um- again when I - I never

² Tr. Fee Arbitration p. 252-253.

had any idea that David would want a trial but -um- and - and -
I...

MS. SHAW: I take you didn't have any conversation with Mr. Leaders about that statement after your original one? You said 'your not goanna use the statement are you?' and he said 'no'. Is that the only conversation you ever had with him about it?

MR. COLE: Yeah before - before we went in and did the statement we had that conversation.

MS. SHAW: Right.

MR. COLE: And then I sent the letter 6 months later and said I just want to remind you this is what I recall so if you try and use it and he moves - to -uh...

MS. SHAW: While - this is while you're still representing Mr. Haeg?

MR. COLE: No. Mr. Robinson had just gotten involved.

MS. SHAW: That's when you wrote that, ok.

MR. COLE: Yeah.

MS. SHAW: Was it addressed to Mr. Leaders?

MR. COLE: Yeah. Don't you have - I - I think you have a copy of it.

MR. METZGER: We do.

MR. HAEG: Yeah.

MS. SHAW: -Um-

MR. COLE: Yeah you have a copy of it.

MS. SHAW: That - that may be...

MR. COLE: No that was - that was my understanding of the deal with Mr. Haeg. That was done at the request of Mr. Robinson I was...

MS. SHAW: But there weren't any conversations while you were negotiating these pleas...

MR. COLE: No.

MS. SHAW: ...where he was saying I will or won't use the statement & you were saying...

MR. COLE: No.

MS. SHAW: ...you ought or not - not to?

MR. COLE: Right.

MS. SHAW: There just wasn't any... (Brent talks over Shaw)

MR. COLE: It never - it never came up after because we always were discussing resolving the case - which it didn't make any difference.³

MR. METZGER: You - you had the deal where Mr. Haeg's statement couldn't be used against Mr. Haeg.

MR. COLE: Right.

MR. METZGER: But could Mr. Haeg's statement have been used against Mr. Zellers?

MR. COLE: No. You can't con - con - can't confront the -uh- confront the cross-examiner.⁴

MS. SHAW: ...did you have any agreement when you made your statement to the authorities that they would not use that statement against you?

MR. HAEG: Nope in fact that's in writing that we did not - in a letter Mr. Cole wrote back to Mr. Fitzgerald because when Mr. Fitzgerald was representing Tony Zellers -uh- found out that I was giving a statement and that Tony then would have to give a statement because then otherwise he'd be seen as uncooperative his immediate concern was whether it could be used against us and he asked Mr. Cole and Mr. Cole actually sent him back the letter. And I don't know if it's and exhibit or not - exhibits or not but I have a copy of it and I think it is in my list explaining what happened there. That MR. FITZGERALD had a

³ Tr. Fee Arbitration p. 283-284.

⁴ Tr. Fee Arbitration p. 285-286.

concern of that and Mr. Cole said, I don't know - if them state - those statements could be used against us.

MS. SHAW: Did Mr. Cole ever tell you before you made the statement that there was an agreement or a guarantee that your statement wouldn't be used against you?

MR. HAEG: Never not once.

MS. SHAW: -Um-

MR. HAEG: And I - I guess I'd like to say I have witnesses to that fact.