Exhibit F

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
Adele J. Pope,	)	Case pending in Aiken County
	)	No. 2013-CP-02-1337
Plaintiff,	)	
	)	
v.	)	**ORDER GRANTING**
	)	**MOTION FOR PROTECTIVE ORDER**
Estate of James Brown and The James Brown 2000 Irrevocable Trust,	)	**AS TO DEPOSITION AND**
	)	**DOCUMENTS OF ROBERT COOK**
	)	
Defendants.	)	
	)	

This Court heard arguments concerning the Motion for Protective Order of Robert Cook in Bamberg on May 1, 2017. After reviewing the memoranda submitted regarding the motion and considering the arguments, this Court grants the Motion for Protective Order of Robert Cook, Solicitor General as to the documents on his privilege log. Deposition objections in the Cook deposition are preserved, but they do not need to be addressed in that none of the questions, objections and responses during the deposition show that Mr. Cook withheld any testimony on the basis of the properly asserted privileges.

The following case law regarding attorney-client privilege and work product privilege is applicable to the documents on the Cook privilege log.

> "The attorney-client privilege protects against disclosure of confidential communications by a client to his attorney." *State v. Owens*, 309 S.C. 402, 407, 424 S.E.2d 473, 476 (1992). "This privilege is based upon a wise policy that considers that the interests of society are best promoted by inviting the utmost confidence on the part of the client in disclosing his secrets to this professional advisor...." *Id.* In *State v. Doster*, this Court explained the attorney-client privilege as follows: "(1) Where legal advice of any kind is sought (2) from a professional legal adviser in his capacity as such, (3) the

communications relating to that purpose (4) made in confidence (5) by the client, (6) are at his instance permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection be waived."

Tobaccoville USA, Inc. v. McMaster, 692 S.E.2d 526, 529–30, 387 S.C. 287, 293 (2010).

As stated in *In re Grand Jury Proceedings #5 impaneled January 28, 2004*, 401 F.3d 247, 250 (4th Cir., 2005) regarding work-product:

> Opinion work product, which does contain the fruit of an attorney's mental processes, is "more scrupulously protected as it represents the actual thoughts and impressions of the attorney." *In re Grand Jury Proceedings*, 33 F.3d at 348. Because the work product privilege protects not just the attorney-client relationship but the interests of attorneys to their own work product, *Hickman*, 329 U.S. at 511, the attorney, as well as the client, hold the privilege. (emphasis added)

See also, Washington v. Follin, 2016 WL 1614166, at *15 (D.S.C., 2016).

Emails, notes and other writings that are the subject of this Motion would be exempt under the above authority and as set forth below in *Washington v. Follin*, 2016 WL 1614166, at *12 (D.S.C., 2016):

> Having conducted an independent in camera review of these items, the Court agrees with the Magistrate Judge's determination. The documents contain "the mental impressions, conclusions, opinions, or legal theories of" SCAG's attorneys (primarily Burchstead) concerning the criminal prosecution of Plaintiff. Fed. R. Civ. P. 26(b)(3)(B); see generally *Republican Party of N. Carolina v. Martin*, 136 F.R.D. 421, 429 (E.D.N.C. 1991) ("The writing of an attorney is a 'mental impression' of that attorney. An attorney's legal 'impressions' and 'theories' include his tactics, strategy, opinions, and thoughts. Opinion work product doctrine material also includes materials reflecting an attorney's legal strategy, intended lines of proof, and evaluation of the strengths and weaknesses of his case." (internal citations omitted)). Both the Magistrate Judge and the Court "must protect against disclosure of" such opinion work product under Federal Rule of Civil Procedure 26(b)(3)(B).

The Court quoted *Hickman v. Taylor*, 329 U.S. 495, 510-11 (1947), as follows

> [I]t is essential that a lawyer work with a certain degree of privacy, free from unnecessary intrusion by opposing parties and their counsel....Were [the attorney's work product] open to opposing counsel on mere demand, much of what is now put down in writing would

> remain unwritten. An attorney's thoughts, heretofore inviolate, would not be his own. Inefficiency, unfairness and sharp practices would inevitably develop in the giving of legal advice and in the preparation of cases for trial. The effect on the legal profession would be demoralizing. And the interests of the clients and the cause of justice would be poorly served.").The Court finds SCAG met its burden to show the work-product privilege provides protection for the categories of materials containing opinion work product.

2016 WL 1614166, at *15. The Court in *Washington* applied the privilege to handwritten notes, post-it notes, intra-office emails and other writings. *Id.* At *16 and note 42.

Most of these emails concern two periods, the time just before and after case 4900 was filed, and the time when the Petition for Rehearing was prepared and filed in *Wilson v. Dallas.* They involved intra-office communications of counsel on those cases and circulate drafts pertaining to those meetings. Certainly, intra-office communications regarding the initiation of the suit and related events would be confidential communications of counsel for the Attorney General to the extent he is named as a party in this case. The same would be true of emails regarding the Petition for Rehearing and would encompass attachments to both groups of emails including, but not limited to draft Petitions.

Although most emails are intra-office, any emails with Alan Medlin or other counsel for the settling parties, including those emails set forth in strings, would be subject to common interest privileges.[1] As explained in *Tobaccoville USA, Inc. v. McMaster,* 692 S.E.2d 526, 529–30, 387 S.C. 287, 293 (2010):

> The common interest doctrine is not a privilege in itself, but is instead an exception to the waiver of an existing privilege. The doctrine "protects the transmission of data to which the attorney-client privilege or work product protection has attached" when it is shared between parties with a common interest in a legal matter. John Freeman, The Common Interest Rule, 6 S.C. Law. 12 (May/June 1995). It is an exception to the general rule that disclosure of privileged information waives the applicable privilege. In re Grand Jury

[1] The extent of the common interest privilege was explained by Sonny Jones in Day 3 of his deposition at pages 15 - 25, 84 and 85. Addendum to Memorandum at pp. 64 – 74,84 & 85.

Subpoenas, 902 F.2d 244, 248 (4th Cir.1990). Thus, information covered by the common interest doctrine cannot be waived without the consent of all parties who share the privilege. *Id.*

Although the Supreme Court accepted the common interest doctrine for the "narrow factual scenario where several states are parties to a settlement agreement," the doctrine clearly applies to discussions among settling parties in the instant case including any such emails included in the log or in the strings associated with the emails listed.

For the foregoing, reasons, IT IS ORDERED that the Motion for Protective Order of Robert Cook be granted as to the documents on his privilege log as set forth above. The privilege objections made in his deposition are preserved, but the transcripts show that he did not withhold any testimony pursuant to the objections.

AND IT IS SO ORDERED.

DOYET A. EARLY, III
PRESIDING JUDGE

June 6, 2017
Bamberg, South Carolina