

EXHIBIT F

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

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PAUL D. CEGLIA) 10CV569
Plaintiff)
vs.
Buffalo, New York
MARK ELLIOT ZUCKERBERG, and) November 3, 2011
FACEBOOK, INC. Defendant. 2:00 p.m.
- - - - - X

ORAL ARGUMENT OF MOTIONS
Transcribed from Electronic Recording Device

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE LESLIE G. FOSCIO
UNITED STATES MAGISTRATE JUDGE

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2 you not?

3 MR. BOLAND: Yes, your Honor.

4 MAGISTRATE JUDGE FOSCIO: So, I'm not trying to
5 put words in your mouth, and I'm not trying to twist any arms
6 here, but would it be fair to say that given the fact that the
7 case is now at issue, both sides have had a fair opportunity to
8 brief and prepare on the point, that in the absence of an
9 affidavit indicating that the so-called lawsuit overview was
10 prepared either by a client, presumably Mr. Ceglia, in
11 connection with seeking legal advice from an attorney or by an
12 attorney communicating confidentially back to the client legal
13 advice, that the Plaintiff has failed to meet its burden as to
14 an attorney/client privilege attaching to this particular
15 document. Would that not be a fair conclusion on my part?

16 MR. BOLAND: Yes, your Honor, without an affidavit
17 attached; that is correct.

18 MAGISTRATE JUDGE FOSCIO: Then the Court must
19 necessarily conclude that the document is not privileged and
20 that the defendant's motion with respect to this document as
21 delineated in the privilege log should be granted.

22 MR. BOLAND: I can just represent to you as an add
23 on that Mr. Argentier is here today and he would be prepared
24 to, as an officer of the court, that he authored that document
25 and analyzed Mr. Ceglia's case and that analysis is reflected

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2 in the document. I'll offer that. If that is insufficient,
3 then we will respect the Court's order.

4 MAGISTRATE JUDGE FOSCIO: Well, I hear that. And
5 I suppose it is true that there is, like, for example, one
6 paragraph detailing the statute of limitations issue which does
7 require, you know, legal research and analysis, but other than
8 that, isn't all of the information a matter of public record,
9 all of the other information?

10 MR. BOLAND: Well, just to be clear, your Honor,
11 we had only --

12 MAGISTRATE JUDGE FOSCIO: I mean in the sense that
13 they state facts which are either in the public record or, if
14 they're not in the public record, they're fact and, therefore,
15 as we all know, facts are not included, all that are included
16 are confidential communications asking for legal advice,
17 confidential communications going back providing such advice.
18 Other than arguably a short paragraph dealing with statute of
19 limitations considerations, it's hard to see much of anything
20 within the four corners of this instrument that qualify under
21 either of those two prongs. With all respect, I mean, I'm
22 trying to give you the benefit of the doubt here. So, in other
23 words, even if Mr. Argentier were to represent such to the
24 Court, that he prepared it and he -- I don't know what he would
25 say, that he sent it back to Mr. Ceglia as a form of legal

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2 advice, is that what he would be representing? Or is it more
3 likely, as I suspect it is, that it was prepared to facilitate
4 communications between Mr. Argentier and potential future
5 counsel with regard to coming into the case in which case it
6 simply represents a case history, which is all a matter of
7 public record, as far as I know. What am I missing here?

8 MR. BOLAND: I think Mr. Argentier indicated that
9 that is accurate, that is the assessment that was made.

10 MAGISTRATE JUDGE FOSCIO: Well, thank you for
11 that. So, as to this document, so-called lawsuit overview, the
12 assertion of privilege is overviewed, the defendant's motion is
13 granted, the plaintiff will provide same within -- since it
14 doesn't look like this is going to be contested -- within five
15 days.

16 MR. BOLAND: Fine.

17 MAGISTRATE JUDGE FOSCIO: All right. Next, the
18 issue is this one-page document, again No. 329, on page two of
19 the privilege log, which seems to be -- and I'm having
20 difficulty discerning exactly what the relevant dates are --
21 but it looks to be like one communication from Mr. Ceglia to
22 Mr. Cole and Mr. Cole to Mr. Ceglia, and then Ceglia to Cole.
23 And the reason I'm struggling is, as you know, counsel, there
24 is a date at the top of March 5th, and yet the first document
25 seems to be generated on March 4th because the response is