

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Monday, May 16, 2011 12:27 PM
To: 'Pat WHITAKER'
Cc: Barfield, Laura
Subject: RE: Status of Examination of Intoxilyzer 8000 Source Code

Thanks, Pat. Just so you know, Escambia County Judge Dannheisser in *State v. Zia* just signed onto the notion of forcing the defendants there to participate in the June examination in Owensboro. He's entering CMI's protective order and defense counsel is to get on board quickly.



Edward G. Guedes
Partner
Board Certified in Appellate Practice
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
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From: Pat WHITAKER [mailto:PWHITAKER@sa18.state.fl.us]
Sent: Monday, May 16, 2011 11:37 AM
To: Edward G. Guedes
Cc: LauraBarfield@fdle.state.fl.us
Subject: Re: Status of Examination of Intoxilyzer 8000 Source Code

I have so notified the county court judges and Judge Alva. I will be giving instructions to the prosecuting attorneys to ask the court in each case to encourage participation. Thanks for the update.

Pat Whitaker

5/17/2011

Misdemeanor Division Chief
101 Bush Boulevard
PO Box 8006
Sanford, FL 32772-8006
(407) 665-6404
Fax# (407) 665-6420
pwhitaker@sa18.state.fl.us

>>> "Edward G. Guedes" <EGuedes@wsh-law.com> 5/13/2011 10:28 AM >>>
Dear Colleagues,

The purpose of this e-mail is to bring all of you up to date with respect to recent developments regarding CMI's efforts to provide access to the source code for the Intoxilyzer 8000 in a meaningful but nonetheless secure manner that doesn't compromise CMI's proprietary interests or the integrity of the State's breath-alcohol testing program. You should feel free to share this e-mail with your colleagues.

In Clay, Nassau and Duval Counties, CMI has agreed to produce (and in Clay County, has actually produced) the written source code in searchable PDF format on a secured flash drive known as an Iron Key. This approach has been specifically endorsed by the judges in those counties as constituting complete compliance with the subpoenas directed to CMI asking for access to the I-8000 source code. In those cases, which all involved trial rather than discovery subpoenas, access to the source code in its native electronic format has been denied.

In Seminole County, Circuit Judge Alva entered in March CMI's protective order and directed that an examination of the I-8000 source code in its native electronic format take place at CMI's headquarters in Owensboro, Kentucky. After discussion with defense counsel (Stuart Hyman), we have written confirmation that Dr. Harley Myler, a defense expert routinely retained by defendants around the state, will conduct an examination of the source code in Kentucky on June 9-10, 2011, with June 11, 12, 16 and 17 reserved for additional possible dates of examination. We believe this examination will resolve many of the outstanding issues that are pending around the state and in many of your cases.

To maximize the benefit of the examination taking place in June, we encourage all of you to "go on record" and alert your judges to these facts and to strongly encourage (if not insist) that defense counsel participate in the examination. To the extent those attorneys

5/17/2011

are employing Dr. Myler's services, all that would be required to participate in the examination is the entry of the approved protective order in each pertinent case, as well as execution of the form non-disclosure agreement by each individual (including counsel) who will have access to the source code in Kentucky. If, on the other, a different expert is to be used, CMI would need to be notified of the identity of that expert and, assuming he or she has not worked for a CMI competitor within the past several years, a non-disclosure agreement would have to be executed by the expert. Many of you already have seen a sample of the protective order and relevant exhibits/agreements by virtue of CMI's having attached them to motions that have been filed in your jurisdictions. If a defendant is going to participate in the examination, however, we would ask that you notify us so that we may deliver to you the most current version of the protective order and exhibits (which include the non-disclosure agreement).

Participation in the examination in Kentucky is not intended to preclude examination of the written source code on Iron Key in your respective counties. If that is the preferred method for your judges (or if that is to take place as a precursor to the June examination in Kentucky), all that would be required would be a slightly modified protective order that specifies the nature of the examination to take place. This would be a protective order comparable to that entered by the judges in Clay, Duval and Nassau Counties.

By the same token, CMI's decision to provide access to the source code should not be construed as interfering with any legal strategies or arguments you may wish to make in your respective cases regarding the materiality of the source code or other technical aspects of the Intoxilyzer.

Many of you have reached out to CMI for assistance in moving your cases forward. We believe that the foregoing examination opportunities should address all of those requests and should hopefully satisfy the concerns of your judges. I have already met with a number of you and appeared before some of the judges in your jurisdictions to address these very subjects. If appropriate, I could be available for a status conference or other organizational meeting, but I would ask that an effort be made to arrange for a telephonic appearance, since I suspect I may be asked to do this a number of times around the state.

Of course, I am always available to discuss with you any concerns you may have.

Regards,

Ed Guedes

Edward G. Guedes
Partner
Board Certified in Appellate Practice
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Intoxilyzer® 8000

Compatible External Printers

CMI has tested the following printer brands/models with the Intoxilyzer® 8000 and found them to be compatible:

- Samsung ML-1450 (parallel)
- Samsung ML-1750 (parallel)
- Brother HL-2070N (parallel)
- Brother HL-2170W (USB)
- Brother HL-5240 (parallel and USB)
- Brother HL5250D (parallel and USB)
- HP Laserjet 1200 (parallel)
- HP Laserjet 1300 (parallel and USB)
- HP Laserjet 1320 (parallel and USB)
- Pentax Pocket Jet 3Plus (USB, connected internally to OH5 units)
- Brother HL-5340 (parallel and USB)
- Brother HL 5150DLT (parallel and USB)

Note: Please ensure the printer selected utilizes a printer port compatible with the Intoxilyzer® 8000 it will interface with (i.e. USB or parallel). Newer models using high speed USB 2.0 are being qualified by engineering.

April 2011

Barfield, Laura

From: Hagan, Pam [pjhagan@alcoholtest.com]
Sent: Wednesday, April 13, 2011 3:01 PM
To: Barfield, Laura
Subject: Printer Compatibility - Updated List
Attachments: I-8000 Printer Compatability List 4-2011.pdf

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APR 13 2011

FDLE
Alcohol Testing Program

Hi Laura,

Attached, please find an updated printer compatibility list.

Pam

Pamela J. Hagan
Technical Sales Manager
CMI, Inc.
316 East Ninth Street
Owensboro, KY 42303
Toll Free: 866-629-9260
Office: 270-685-6294
Cell: 270-748-0805
Fax: 270-685-6678
Email: pjhagan@alcoholtest.com
Web: www.alcoholtest.com

Are we connected on LinkedIn?

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4/14/2011



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October 13, 2011

Patrick Murphy
Department Inspector
Florida Department of Law Enforcement
Alcohol Testing Program (Rm. A3051)
PO Box 1489
Tallahassee, FL 32302

Dear Patrick,

In response to the question you posed earlier in the week regarding the Intoxilyzer 8000, the measurement of breath alcohol concentration is not dependent in any way on the measurement of flow rate or volume. The instruments are designed to measure the alcohol concentration of the sample provided to them.

As we both know, the protocol utilized by FDLE calls for the testing of sample concentration accuracy using a NIST traceable standard twice during each breath test, again monthly, and also yearly. Each of these tests validates the accuracy of the tested instrument.

If you have any further questions, please give me a call.

Thank you,

A handwritten signature in black ink, appearing to read "Toby S. Hall". The signature is written in a cursive style with a large initial "T" and "H".

Toby S. Hall
President
CMI, Inc.

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 Fax: 270-685-6678
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FAX TRANSMISSION

TO: Laura Barfield (Company) FDLE - Alcohol Testing
 (Fax Number) 850-921-3787
 FROM: Pam Hagan (Return Fax Number) (270) 685-6678
 SUBJECT: _____ COPIES TO: _____
 DATE: 9/10/12 Number of Pages: 2

Laura,

Per our conversation a few months ago, attached is the current calibration certificate. The date of implementation was May 28, 2012.

Call or email me with any questions.

Pam

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SEP 10 2012

FDLE
 Alcohol Testing Program



Certificate of Calibration

This is to certify the calibration of ~~Intoxalyzer~~ a serial number _____, manufactured by CMI Inc., a subsidiary of MPD, Inc. of Owensboro, Kentucky, was tested and found to conform to the National Highway Traffic Safety Administration (NHTSA) Standard for Devices to Measure Breath Alcohol (Federal Register, Vol.58 No.179, pp 48705-48710, Sept. 17, 1993) for accuracy and precision. Reference materials are traceable through the National Institute of Standards and Technology (NIST) to the International System of Units (SI).

Date _____ Signed _____



TECHNOLOGY

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USA

Part No. 52017 Rev.A

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SEP 10 2012

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Alcohol Testing Program



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July 13, 2012

Ms. Laura D. Barfield, Manager
FDLE – Alcohol Testing Program
PO Box 1489
Tallahassee, FL 32302

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JUL 21 2012

FDLE
Alcohol Testing Program

RE: Your Inquiries

Dear Ms. Barfield:

This letter is in response to your request for information regarding two Engineering Change Notices (“ECNs”): CM04-190 and CM05-073. These ECNs, dated August 2004 and April 2005, respectively, involved changes to the exhaust assembly, CMI part number 021492FL.

ECN CM04-190 covers the addition of the hole in the check valve. The purpose of the hole is to minimize the affect of leaks when using a wet bath simulator.

Intoxilyzer 8000s with serial numbers, 80-001173, 80-001175, and 80-001181, were assembled in January of 2005 and would have had the hole in the check valve from the date of their manufacture. We have since confirmed that each instrument listed does, in fact, have the hole in the check valve.

ECN CM05-073 covers a change in screw length in the exhaust assembly. The purpose of shortening the screw was for precautionary reasons. It was determined that the original screw was a little too long (1mm).

We have confirmed that Intoxilyzer 8000s with serial numbers, 80-001173, 80-001175, and 80-001181, do have the shorter screw in place.

These changes do not affect the accuracy or precision of the Intoxilyzer 8000 currently being utilized in the State of Florida.

Sincerely,

Brian Faulkner
Engineering Manager

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Fax: 270-685-6678
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July 13, 2012

Ms. Laura D. Barfield, Manager
FDLE – Alcohol Testing Program
PO Box 1489
Tallahassee, FL 32302

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Sincerely,

A handwritten signature in black ink that reads "Brian Faulkner".

Brian Faulkner
Engineering Manager

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Statement of Warranty

New Product Warranty

CMI Inc. warrants that each new product will be free from defects in material and workmanship, under normal use and service, for a period of one year from the date of invoice to the initial purchaser. CMI's obligation is limited to repairing or replacing, as CMI may elect, any part or parts of such product, which CMI determines to be defective in material or workmanship. Warranty repairs will be performed at the factory or at a factory authorized service center.

The product, or part of the product, considered to be covered by the conditions of this warranty shall be returned, freight prepaid, in its original shipping container or similar protective container, to the factory, only after receipt of a Returned Material Authorization number from CMI. The repaired or replacement part or product will be returned from CMI or the authorized service center, freight prepaid.

Warranty coverage extends only to the original purchaser and does not include abuse, misuse, cables, switches or use of the product for other than its intended purpose. This warranty also does not apply if the product is adversely affected by attaching any feature or device to it, or is in any way tampered with or modified, without expressed written permission from CMI, Inc.

Repaired Product Warranty

Out of warranty product repairs are warranted for 90 days from the date of repair. This includes labor and those parts, which are replaced. If additional repair is required within the 90-day period, there will be a charge for any parts that were not originally replaced. Repairs made during this 90-day period that are unrelated to the original repair are not covered under the warranty.

There are no warranties expressed or implied, including but not limited to, other than those contained in this warranty. In no event shall CMI be liable for any loss of profits or any indirect or consequential damages arising out of any such defect in material or workmanship.

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- **CMI** INC. -

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March 9, 2012

Florida Department of Law Enforcement
Alcohol Testing
2729 Fort Knox Boulevard
Building 2
Tallahassee, FL 32308
Attn: Ms. Laura Barfield, Program Manager

Dear Laura,

As per the request of Roger Skipper, I am writing this letter to advise you of the date indicated on CMI's Engineering Change Notice for the addition of the hole to the check valve located in the Intoxilyzer 8000 end block. The Notice is dated August 18, 2004.

Should you have further questions, please do not hesitate to contact me.

Brian Faulkner
Manager, Engineering

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MAR 26 2012

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Barfield, Laura

From: Triggs, Alan <ACTriggs@alcoholtest.com>
Sent: Thursday, January 17, 2013 12:10 PM
To: Barfield, Laura
Subject: Letters
Attachments: Barfield 1-14-13.pdf; NHTSA Response 12-3.pdf

Laura,

Attached is the response from NHTSA regarding the hole in the check valve and short screw. Also attached is notification regarding an upcoming change in the 8000. We have submitted the change to NHTSA. We have a verbal approval. We will let you know when we get the official letter.

Please let me know if it is OK to forward the documents to the TSRPs in Florida.

Alan C. Triggs, Esq.
Corporate Counsel/Compliance Officer
CMI, Inc.
(270) 685-6681

Barfield, Laura

From: Triggs, Alan <ACTriggs@alcoholtest.com>
Sent: Thursday, January 17, 2013 2:18 PM
To: Barfield, Laura
Subject: RE: Letters

Laura,

It will be all 8000s produced after the evaluation.

Alan C. Triggs, Esq.
Corporate Counsel/Compliance Officer
CMI, Inc.
(270) 685-6681

From: Barfield, Laura [<mailto:LauraBarfield@fdle.state.fl.us>]
Sent: Thursday, January 17, 2013 1:15 PM
To: Triggs, Alan
Cc: Johnson, Ann Marie
Subject: RE: Letters

Alan,
Thanks for the letters. Forwarding them is fine with me.
Will this change take place in new Florida instruments after NHTSA evaluates it?
Laura

From: Triggs, Alan [<mailto:ACTriggs@alcoholtest.com>]
Sent: Thursday, January 17, 2013 12:10 PM
To: Barfield, Laura
Subject: Letters

Laura,

Attached is the response from NHTSA regarding the hole in the check valve and short screw. Also attached is notification regarding an upcoming change in the 8000. We have submitted the change to NHTSA. We have a verbal approval. We will let you know when we get the official letter.

Please let me know if it is OK to forward the documents to the TSRPs in Florida.

Alan C. Triggs, Esq.
Corporate Counsel/Compliance Officer
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January 14, 2013

Ms. Laura D. Barfield, Manager
FDLE – Alcohol Testing Program
PO Box 1489
Tallahassee, FL 32302

RE: Modification of the Intoxilyzer 8000

Dear Ms. Barfield:

This letter is to inform you of an upcoming change to new Intoxilyzer 8000s that are sold into Florida. Due to the discontinuation of the paint currently used on the inside of the plastic cover, CMI has chosen a replacement paint that has the same properties as the current paint.

CMI has submitted the Intoxilyzer 8000 with the new paint to the Volpe Transportation Systems Center for re-evaluation by NHTSA. CMI will inform you of the results of the re-evaluation upon receipt.

This change in paint in no way affects the instruments currently in Florida nor will it affect the precision, accuracy, or performance of instruments that are sold into Florida in the future. If you have any questions or concerns regarding the change, please feel free to call.

Sincerely,

A handwritten signature in black ink that reads "Alan C. Triggs". The signature is written in a cursive style.

Alan C. Triggs
Corporate Counsel/Compliance Officer





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May 23, 2016

Ann Marie Johnson, Legal Advisor
Alcohol Testing Program
Florida Department of Law Enforcement
2331 Phillips Road
Tallahassee, FL 32308

RE: Accuracy of the Intoxilyzer 8000

Dear Ms. Johnson:

The National Highway Traffic Safety Administration ("NHTSA") Highway Safety Programs; Conforming Products List of Evidential Breath Alcohol Measurement Devices requires that all approved devices have an accuracy of +/- 0.005 or +/- 5% g/210L, whichever is greater. While CMI does not make recommendations regarding instrument accuracy, the accuracy of the Intoxilyzer 8000 meets and exceeds the Federal requirements for this industry.

Should you have any further questions or concerns, please feel free to call.

Sincerely,

Alan C. Triggs

Alan C. Triggs
Corporate Counsel/Compliance Officer

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August 12, 2016

Florida Department of Law Enforcement
Alcohol Testing Program
PO Box 1489
Tallahassee, FL 32302
Attn: Dr. Brett Kirkland
Program Manager

Re: I-8000 Power Distribution PWB (p/n 021288) update

Dear Dr. Kirkland,

The Intoxilyzer 8000 Power Distribution Board (p/n 021288G01) utilizes 3 power supply components that have recently went obsolete. A second, interchangeable source has been identified for these components.

Rest assured, this update does not affect the accuracy or precision of the Intoxilyzer 8000 currently being utilized in the State of Florida.

If you have any further questions about this matter, please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Grantham", written over a horizontal line.

Jon Grantham
Engineering Manager
CMI, Inc.





316 East Ninth Street
Owensboro, KY 42303
866-835-0690
www.alcoholtest.com

August 27, 2017

Dr. Brett Kirkland, Manager
FDLE – Alcohol Testing Program
2331 Phillips Road
Tallahassee, FL 32308

RE: Intoxilyzer 8000 Internal Printer Update

Dear Dr. Kirkland:

Due to obsolescence of the existing Intoxilyzer 8000 internal printer components, a replacement printer interface board (p/n 690062) and printer mechanism (p/n 690076) will be installed in all new Intoxilyzer 8000s and in existing Intoxilyzer 8000s in for service requiring a printer replacement.

These printer changes also necessitate new mounting hardware and brackets. The new printer arm allows for easier loading of paper as the printer arm swings up allowing more room to guide the paper over the printer head.

The above changes to the internal printer will not affect the accuracy or precision of the Intoxilyzer 8000.

If you have any further questions or concerns, please feel free to call me.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Grantham", written over a horizontal line.

Jon Grantham
Engineering Manager