



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

March 8, 2004

Ms. Laura Barfield
Manager, Alcohol Testing Program
Florida Department of Law Enforcement
PO Box 12489
Tallahassee, FL 32302-1489

Dear Ms. Barfield:

CMI, Inc., as part of the evaluation process, has provided to the Florida Department of Law Enforcement materials on the Intoxilyzer 8000. Those materials include operator manuals, training materials, presentations, electrical drawings, etc. We would ask that you return all documentation at your earliest convenience.

If you have any question please contact us at your convenience.

Regards,

A handwritten signature in cursive script that reads "Thomas S. Myers".

Thomas S. Myers
Regional Sales Manager
Law Enforcement





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**FDLE
Alcohol Testing Program**

January 25, 2005

Ms. Laura Barfield
Manager, Alcohol Testing Program
Florida Department of Law Enforcement
PO Box 12489
Tallahassee, FL 32302-1489

Dear Ms. Barfield:

CMI, Inc., as part of the evaluation process, has provided to the Florida Department of Law Enforcement confidential materials on the Intoxilyzer 8000. These confidential materials include operator manuals, training materials, presentations, electrical drawings, etc. We would ask that you return all above referenced documentation at your earliest convenience.

If you have any question please contact us at your convenience.

Regards,

Pamela J. Hagan
Technical Sales Manager

INTOXILYZER® ...so you can breathe easier





316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

Intoxilyzer® 8000

Principle of Analysis

The Intoxilyzer® 8000 utilizes non-dispersive infrared absorption as its principle of analysis.

Model Designation

8000

Description

The Intoxilyzer 8000 is an infrared-based instrument designed for both mobile and stationary evidential breath alcohol testing.

Operating Temperature

Recommended: 0°C – 40 °C

Instrument Software

The Intoxilyzer 8000 runs a proprietary program on a preemptive multitasking operating system.





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Intoxilyzer® 8000

Compatible External Printers

CMI has tested the following printer brands/models for compatibility with the Intoxilyzer 8000:

Samsung ML-1450, ML-1750
Brother HL-2070N
HP LaserJet 1200
HP LaserJet 1300
HP LaserJet 1320

In addition to the above printer brands/models, PCL6 compatible printers will interface with the Intoxilyzer 8000.





MPD Companies

FAX TRANSMISSION

TO: (Name) Ms. Laura Barfield **(Company)** FDLE
(Fax Number) (850) 410-7816
FROM: (Name) Pam Hagan **(Return Fax Number)** 270-685-6678
SUBJECT: Intoxilyzer 8000 **COPIES TO:** _____
DATE: April 18, 2005 **Number of Pages:** 2

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APR 19 2005

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Intoxilyzer® 8000

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Alcohol Testing Program

Make and Model Designation

Intoxilyzer® 8000

Method of Analysis

The Intoxilyzer® 8000 utilizes non-dispersive infrared absorption as its principle method of analysis.

Software Version

8100.24

Description of Instrumentation

The Intoxilyzer® 8000 is an infrared-based instrument designed for both mobile and stationary evidential breath alcohol testing.

Specification for Precision

Average standard deviation of 0.003 g/210L or better

Response Prescribed to Denote and Interferent (Visual and Audible)

The Intoxilyzer® 8000 will display INTERFERENT DETECT and a high/low tone will sound.

Response Prescribed to Denote Mouth Alcohol (Visual and Audible)

The Intoxilyzer® 8000 will display SLOPE NOT MET and a high/low tone will sound.

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Intoxilyzer® 8000

Make and Model Designation

Intoxilyzer® 8000

Method of Analysis

The Intoxilyzer® 8000 utilizes non-dispersive infrared absorption as its principle method of analysis.

Software Version

8100.25

Description of Instrumentation

The Intoxilyzer® 8000 is an infrared-based instrument designed for both mobile and stationary evidential breath alcohol testing.

Specification for Precision

Average standard deviation of 0.003 g/210L or better

Response Prescribed to Denote and Interferent (Visual and Audible)

The Intoxilyzer® 8000 will display INTERFERENT DETECT and a high/low tone will sound.

Response Prescribed to Denote Mouth Alcohol (Visual and Audible)

The Intoxilyzer® 8000 will display SLOPE NOT MET and a high/low tone will sound.

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Barfield, Laura

From: Venturi, George
Sent: Tuesday, August 02, 2005 11:06 AM
To: HQ CJP A.T. All Members
Subject: FW: Printers for the I8000

-----Original Message-----

From: Hall, Toby [mailto:tshall@alcoholtest.com]
Sent: Wednesday, July 27, 2005 11:53 AM
To: Venturi, George
Cc: Hagan, Pam; Taylor, Becky
Subject: Printers for the I8000

George,

It was really good talking with you and catching up. Look forward to linking up sometime this fall.

The printers that we have tested with the I8000 are as follows: Samsung ML-1450, ML-1750 Brother HL-2070N HP LaserJet 1200, LaserJet 1300, LaserJet 1320

Additionally, if you find a printer that is either PCL5e, or PCL6 compatible, it should work.

Thanks George,

Toby H.

Barfield, Laura

From: Hagan, Pam [pjhagan@alcoholtest.com]
Sent: Thursday, September 08, 2005 1:32 PM
To: Barfield, Laura
Subject: Intoxilyzer 8000
Attachments: broken toroid.JPG

Hi Laura,

Engineering has asked me to gain approval from you regarding the following proposed solution to alleviate a potential service issue with the I-8000.

Please reference the attached picture.

The proposed solution is to add a small quantity of silicone rubber between the the components as labeled in the picture. This silicone rubber would alleviate broken component leads caused by vibration of the instrument. Such broken leads result in instrument failures. The addition of the silicone rubber will not require any change to the bill of materials for the Intoxilyzer 8000. Nor, will this change effect the electrical or chemical properties and/or accuracy of the instrument.

Let me know what you think.

Pam



apply RTV
to prevent
breakage

Barfield, Laura

Hi Laura,

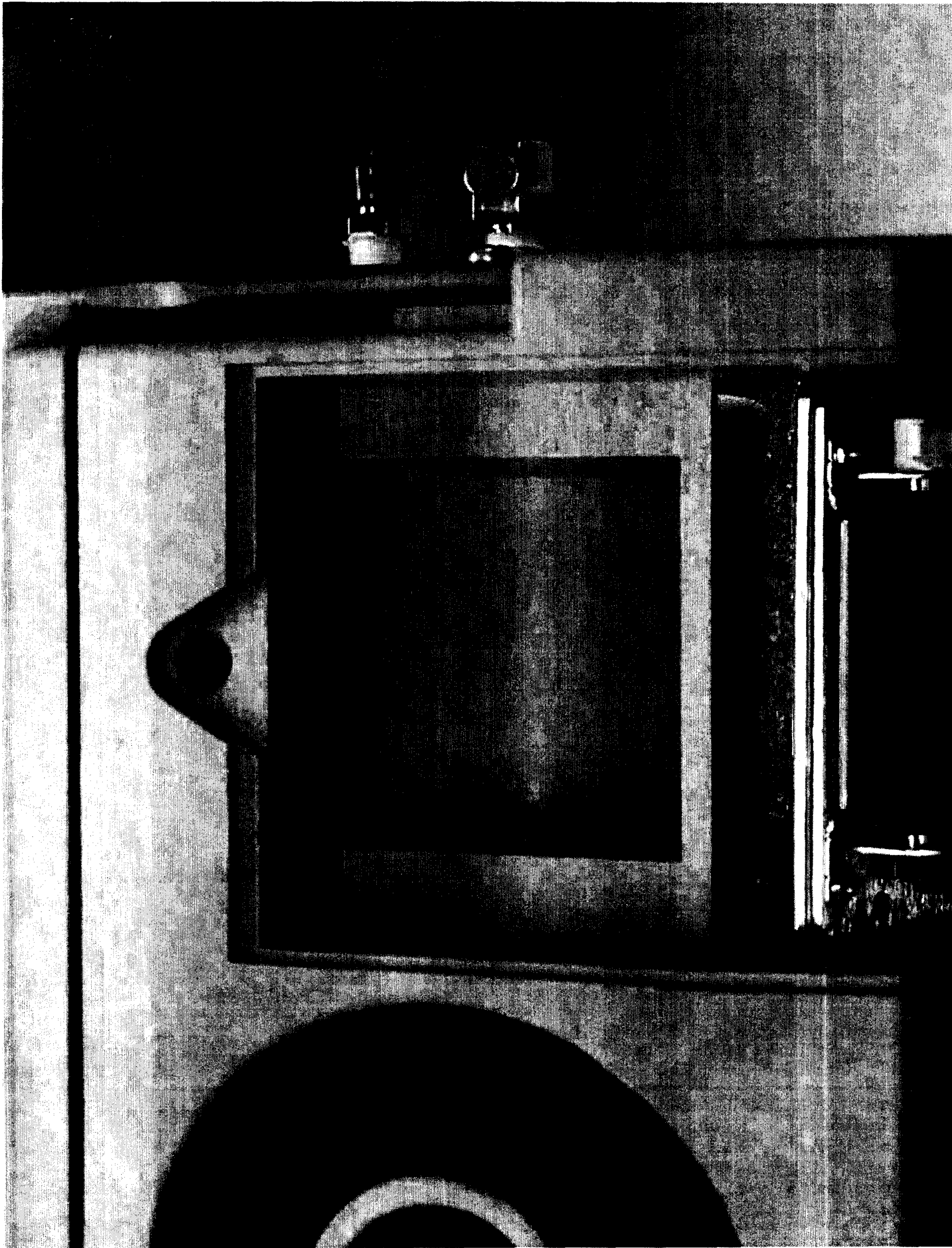
Attached please find (4) pictures of the Intoxilyzer 8000 thermal printer paper compartment. Note, the compartment is found in the instrument's top cover. This mold change provides for the addition of a paper spindle.

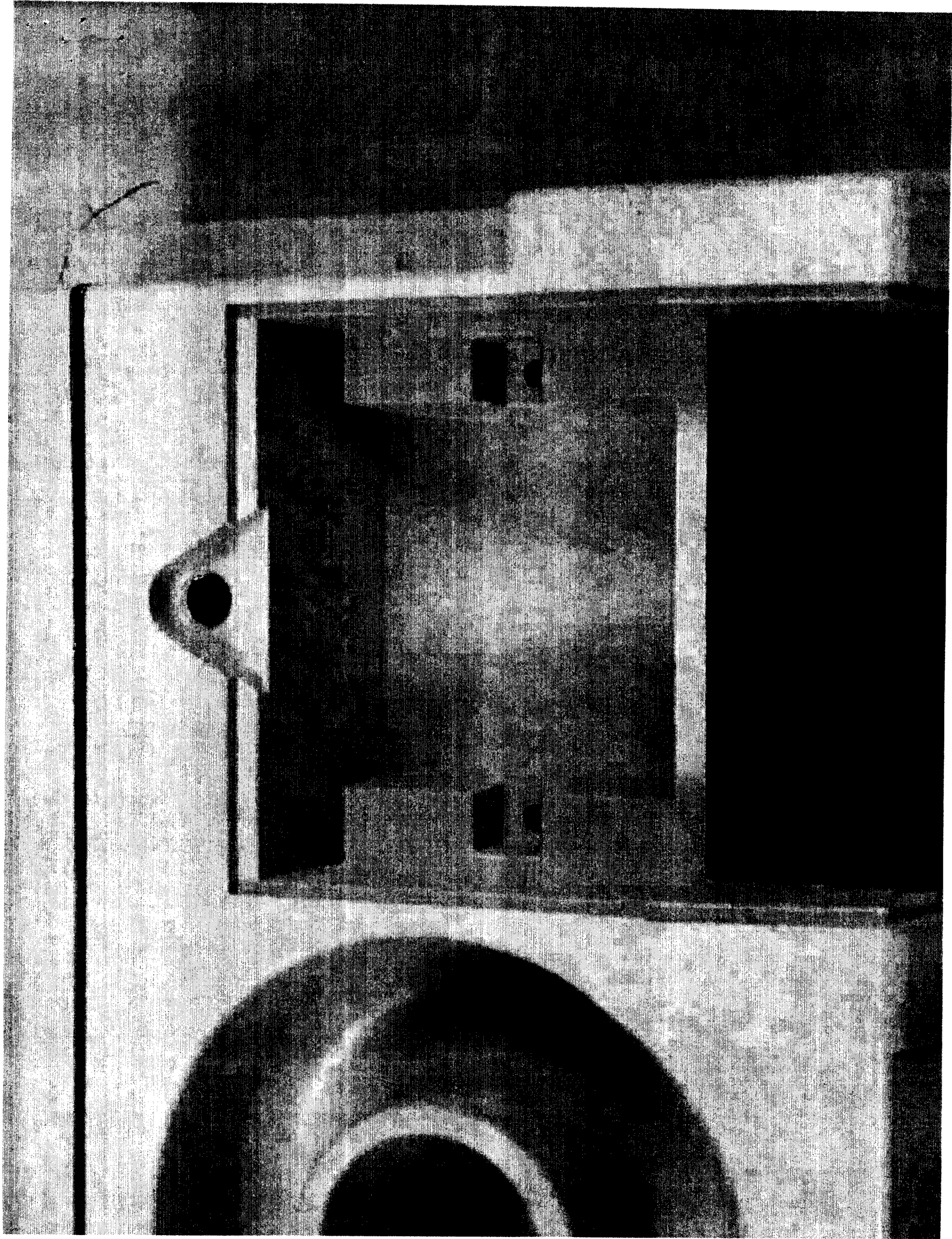
Currently, no Florida units have been shipped with this new top cover. However, with the combination of Phase III and training instruments we will begin to ship instruments with new top covers into the State.

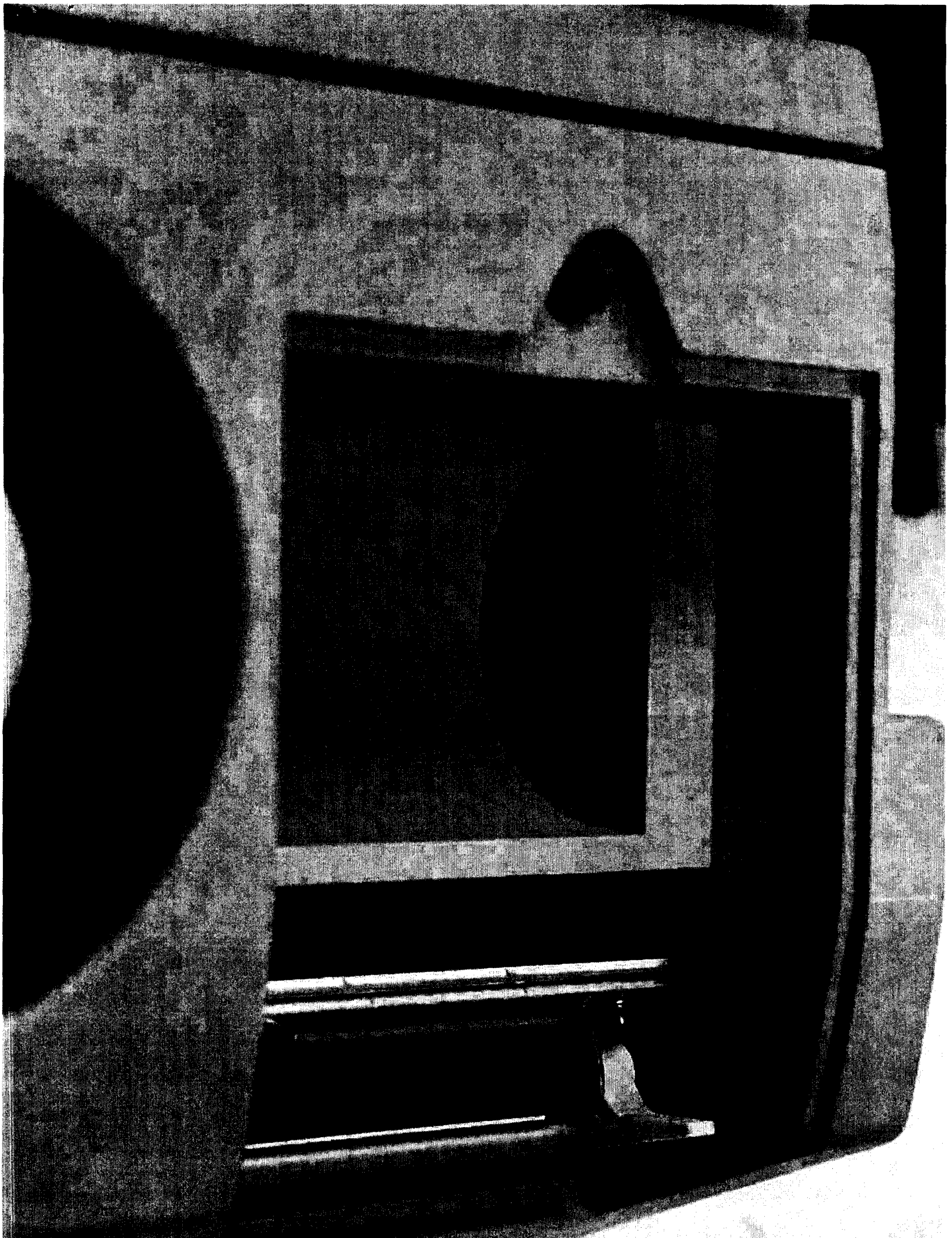
Toby Hall and I will be calling you later this afternoon to discuss this.

Thanks,

Pam









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December 9, 2005

Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

Dear Laura Barfield,

The Intoxilyzer 8000 utilizes a form printing engine that allows a document created in Microsoft Word to be used as a template for printing documents from the instrument and from COBRA. The information that will be printed on the template is generated by the instrument the same way each and every time a test is ran. The template has field codes that tell the instrument where to print the information collected during the test. More simply, the template provides static text and placement of information already collected to create the populated form.

The Microsoft Word template files are considered a preprinted form. They are stored as a separate file in a separate memory device in the instrument. When tests are performed on the instrument, the data needed for printing is collected independent of the template that will be used to print them.

Since the templates have no bearing or influence on the test data and are physically stored in a separate device, they are treated separate from the software version of the instrument.

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

Best regards,

A handwritten signature in cursive script that reads "Toby S. Hall, Jr.".

Toby S. Hall
Applications Engineering Manager
CMI, Inc.





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December 9, 2005

Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

Dear Laura Barfield,

The Intoxilyzer 8000 does not need recalibration after a software update unless the analytical portion of the software has been modified.

The software changes being made to the instrument at the request of the state of Florida do NOT involve the analytical portion of the software therefore the instruments will not need to be recalibrated.

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

Best regards,

A handwritten signature in cursive script that reads "Toby S. Hall" followed by a small "jw" or similar mark.

Toby S. Hall
Applications Engineering Manager
CMI, Inc.





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Owensboro, KY 42303
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Intoxilyzer® 8000

The Intoxilyzer 8000 instrument is designed to give very accurate results. This is accomplished by using a large variety of electrical and mechanical components, each having a tolerance in physical and/or electrical specifications. Both mechanical and electrical adjustments are made to the instrument during the manufacturing process, to insure that the instrument meets all performance requirements. In most cases, slots are used to make mechanical adjustments and potentiometers are used to make electrical adjustments. There are two cases where fine adjustments are necessary and neither of these two methods will work.

- 1.) Tolerances in the output of the IR source, and detector sensitivity, make it necessary to make a gain adjustment in the preamp. Because potentiometers tend to be noisy there are three resistors that have their values selected during the manufacturing process. These three resistors can vary in resistance from instrument to instrument in order to optimize preamp gain.
- 2.) Dimensional tolerances between the detector and the window in the sample chamber are maintained by making a clearance adjustment. This adjustment is made during manufacturing and when necessary, a shim is added between the two parts. Some instruments will have the shim and some will not, as required to maintain proper dimensional tolerance.

Other less apparent noticeable differences in the instrument are due to using parts from different manufacturers. Parts from different manufacturers meet the same engineering specifications, but sometimes look differently. One example is connectors. There are two manufacturers approved, so it is possible there are instruments with white connectors, brown connectors or a mixture of both. Capacitors are another example. One manufacturer uses black epoxy, another uses yellow.

These perceived differences do not change instrument functionality, nor do they compromise instrument performance.

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www.alcoholtest.com

December 9, 2005


Florida Department of Law Enforcement
Alcohol Testing Program
PO Box 1489
Tallahassee, FL 32302-1489
Attn: Ms. Laura Barfield

Dear Ms. Barfield,

Subject: Changes made to the Florida instrument since the last evaluation.

1. Breath Hose – The black vinyl coating was removed from the ends of the breath hose and replaced with heat shrink tubing. This was done for aesthetic reasons, as well as to improve durability.
2. Tall Feet – Four additional rubber feet were added between the gas delivery system and the instrument. This raised the instrument up so the calibration inlet port height is the same as the Guth simulator.
3. Power Supply Coils – RTV is being added to secure two coils on the power distribution board. This was done to prevent failures of the component due to vibration.
4. Case Changes – Changes have been made to the case mold to add features. The capability of adding a paper holder was added along with places to add connectors for future use.

None of the above changes have any effect on the operation, accuracy or analytical reliability of the instrument.


William S. Schofield
Manager-Engineering





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1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

Intoxilyzer® 8000

Make and Model Designation

Intoxilyzer® 8000

Method of Analysis

The Intoxilyzer® 8000 utilizes non-dispersive infrared absorption as its principle method of analysis.

Software Version

8100.26

Description of Instrumentation

The Intoxilyzer® 8000 is an infrared-based instrument designed for both mobile and stationary evidential breath alcohol testing.

Specification for Precision

Average standard deviation of 0.003 g/210L or better

Response Prescribed to Denote and Interferent (Visual and Audible)

The Intoxilyzer® 8000 will display INTERFERENT DETECT and a high/low tone will sound.

Response Prescribed to Denote Mouth Alcohol (Visual and Audible)

The Intoxilyzer® 8000 will display SLOPE NOT MET and a high/low tone will sound.

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May 30, 2006

Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

Dear Ms. Barfield,

As a follow-up to Bill Schofield's letter on the 9th of December, please find the following clarifications/additions.

1. Breath Hose – Bill had written, "The black vinyl coating was removed from the ends of the breath hose and replaced with heat shrink tubing. This was done for aesthetic reasons, as well as to improve durability." This update was not included in the instruments that were used in the evaluation in January 2006.
2. Tall Feet – Bill had written, "Four additional rubber feet were added between the gas delivery system and the instrument. This raised the instrument up so the calibration inlet port height is the same as the Guth simulator." This update was included in the instruments that were used in the evaluation in January, 2006.
3. Power Supply Coils – Bill had written, "RTV is being added to secure two coils on the power distribution board. This was done to prevent failures of component due to vibration." This update was not included in the instruments that were used in the evaluation in January 2006. Further, the two components were essentially glued to the board to prevent large shocks or vibration from dislodging them.
4. Case Changes – Bill had written, "Changes have been made to the case mold to add features. The capability of adding a paper holder was added along with places to add connectors for future use. This update was not included in the instruments that were used in the evaluation in January 2006.

I reiterate and agree with what Bill had said regarding instrument operation in that, "None of the changes have any effect on the operation, accuracy or analytical reliability of the instrument."

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

Regards,

Toby S. Hall
Applications Engineering Manager

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JUN 06 2006

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EMI INC.
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Intoxilyzer® 8000
Mag Card Reader Dongle

Instructions:

Allow the instrument to warm up and be in the Ready mode. Unplug the instrument's keyboard and plug in the dongle. After 1 second, the LED will turn on for 3 seconds and then turn off. Five commands will be sent to the card reader. After each command is sent, the LED will turn on for 1 second and then turn off. The card reader will beep 1 time. (Note: The 4th and 5th commands take longer to send.) After the 5th command is sent, the LED will flash 3 times to signal the configuration procedure is complete. Remove the dongle and plug in the keyboard.

Now test the mag card reader by pressing the Start Test button and initiating a subject test. When the driver's license is swiped, the card reader will read all 3 tracks and beep only 1 time. The instrument will then generate the acceptance tone. There is an approximate 2 second delay between the swipe of the card and the beep from the reader. This is normal.

If for any reason during the configuration, the card reader fails to acknowledge a command with a beep or rejects a command by beeping twice, allow the dongle to issue all 5 commands, flash 3 times and stop. Unplug the dongle and repeat the configuration process.



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
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June 7, 2006

Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

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JUN 09 2006
FDLE
Alcohol Testing Program

Dear Ms. Barfield,

This letter is to notify you of an issue with the mag-swipe card reader found in the Intoxilyzer 8000 utilized by Florida and the subsequent corrective action taken by CMI, Inc.

Issue

When swiping a Florida driver's license during a subject test, the Intoxilyzer 8000 frequently fails to read the information recorded on the license. When reading information from the mag card, we discovered the driver's license swipe was being invalidated due to a 3 second timeout established in the I-8000's instrument software (version 8100.26). A combination of a newer Florida driver's license, which now includes more information recorded on it, plus the current release of the mag card reader obtained from the manufacturer causes the time to read information from the license to *slightly* exceed 3 seconds to 3.05 seconds. Therefore, the license swipe during a subject test frequently fails resulting in the instrument operator inputting the required data entry via the keyboard.

The failure of the mag card reader to read information recorded on the Florida driver's license does not have any effect on the operation, accuracy or analytical reliability of the instrument.

Corrective Action

The manufacturer of the mag card reader gives the user (CMI) the flexibility of issuing commands from the keyboard directly to the mag card reader. These commands customize the format of the data the card reader sends when a mag card is swiped. CMI has modified the format of the data sent by the mag card reader reducing the amount of time to read a Florida driver's license to less than 3 seconds, specifically to 2.3 seconds.

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Page 2

Ms. Laura Barfield

June 7, 2006

The commands issued to the mag card reader from the keyboard to customize the format of the data are difficult to type in by hand. As a result, CMI has encoded these commands into a Mag Card Reader Dongle which emulates the typed keyboard commands. By unplugging the keyboard of the I-8000 and plugging in the Mag Card Reader Dongle the dongle automatically loads the commands to the mag card reader. The commands configure the mag card reader to obtain specific information when a Florida driver's license or identification card is swiped. The card reader maintains this configuration permanently. I have included for your reference a copy of the instruction sheet for the Mag Card Reader Dongle.

The Mag Card Reader Dongle and the commands stored on it do not interact with the software in the Intoxilyzer 8000; do not change the software in the Intoxilyzer 8000 (8100.26); and have no effect on the operation, accuracy or analytical reliability of the instrument.

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

Regards,


Toby S. Hall

Applications Engineering Manager



INC.

316 East Ninth Street
Owensboro, KY 42303
866-835-0690
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Intoxilyzer® 8000

Mag Card Reader Dongle

Instructions:

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Owensboro, KY 42303
1-866-835-0690
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June 9, 2006

Laura Barfield
Program Manager
Florida Dept of Law Enforcement
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Tallahassee, FL 32302-1489

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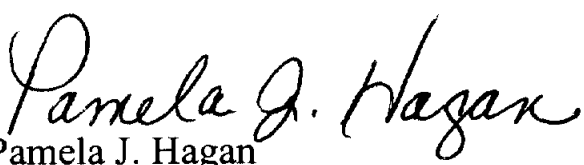
Re: Certificate of Calibration issued for 80-001173

Dear Ms. Barfield,

Please do not use the Certificate of Calibration issued for 80-001173 dated 11/28/05. After reviewing the calibration data for the above referenced instrument, the instrument was in fact calibrated 12/28/05. Please begin using the corrected Certificate of Calibration sent to you 6/8/06 via Federal Express.

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

Regards,


Pamela J. Hagan
Technical Sales Manager





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Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
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June 9, 2006

Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

Re: Certificate of Calibration issued for 80-001173

Dear Ms. Barfield,

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

Regards,


Pamela J. Hagan
Technical Sales Manager

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MPD Companies

FAX TRANSMISSION

| | | | |
|---------------------|-----------------------|----------------------------|-----------------------|
| TO: (Name) | <u>Laura Barfield</u> | (Company) | <u>FDLE</u> |
| | | (Fax Number) | <u>(850) 410-7816</u> |
| FROM: (Name) | <u>Pam Hagan</u> | (Return Fax Number) | <u>270-685-6678</u> |
| SUBJECT: | <u>Evaluation</u> | COPIES TO: | <u></u> |
| DATE: | <u>June 19, 2006</u> | Number of Pages: | <u>2</u> |

Laura,

There should not be a problem in turning around the evaluation instruments again to arrive to you by July 28th.

In speaking with Bill, the systems board does include the ring detect circuit and would include the "starburst" capacitor. The RTV on the coils is found on the power distribution board.

Let me know what you think regarding the attached page.

Pam

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Alcohol Testing Program

80-001173 will become the baseline instrument. Please ensure the following requirements listed below are met.

- No changes/updates to instrument.
- Do not update mag card reader.
- Do not update with Form 41.
- Do not update capacitor on ring detect circuit. Must have .047 microfarad capacitor on ring detect circuit.
- No RTV on power supply coils.
- Must have "old style" printer paper compartment.
- Must have "old style" breath hose – no heat shrink tubing near mouthpiece end.
- Must have version 26 software.
- Include rubber feet.
- Calibrate/Final

80-001175 will become the instrument that receives all updates throughout the years. Please ensure the following requirements are met.

- Do not update Form 41.
- Do not update mag card reader.
- Update with latest breath hose.
- Update with latest case (both top hat and bottom).
- Update capacitor on ring detect circuit. Must have .47 microfarad capacitor on ring detect circuit.
- Must have new printer paper compartment.
- Include rubber feet.
- Use RTV on power supply coils.
- Must have version 26 software.
- Calibrate/Final

80-001181

- Change instrument memory from 2 MB to 1 MB.
- No other changes to instrument. Instrument hardware will remain the same as previously evaluated.
- Do not update mag card reader.
- Do not update with Form 41.
- Calibrate/Final

| <u>Address 1</u> | <u>Address 2</u> | <u>City</u> | <u>Contact</u> | <u>State</u> | <u>Zip</u> | <u>Phone</u> | <u>Serial Number</u> |
|--------------------------------|---------------------------|---------------|-----------------------------|--------------|------------|---------------------|----------------------|
| 3421 North Highway 77 | | Panama City | Sgt. Marc Tochtermann, FCPP | FL | 2319 | 850-747-4700 x 2319 | 80-001646 |
| 815 Nicholas Parkway | | Cape Coral | Office Todd Brownson | FL | 33991 | | 80-001647 |
| PO Box 36 | | Flagler Beach | Chief Roger D. Free | FL | 32136 | 386-517-2023 | 80-001648 |
| 4500 58th Street North | | Kenneth City | Chief James P. Ernst | FL | 33709 | | 80-001649 |
| 2793 Lake Street | | Lawtey | Majory Nathan R. Blom | FL | 32058 | | 80-001650 |
| | | | Harold Minch | FL | | | 80-001651 |
| 901 SW 62 Avenue | | West Miami | Captain Nelson Andreu | FL | 33144 | | 80-001652 |
| | | | Lt. Greg Schwemley | FL | | | 80-001653 |
| | | | Sgt. Luis Taborda | FL | | | 80-001654 |
| | | | Sgt. Jennifer Michaux | FL | | | 80-001655 |
| | | | Ryan Shickfus | FL | | | 80-001656 |
| 19 Miles W. of Kroma Avenue | on Rt. 41, Mile Marker 70 | Miami | | FL | 33194 | 305-894-2347 | 80-001657 |
| | | | William B. Barber | FL | | | 80-001714 |
| | | | Captain Patrick Quinn | FL | | | 80-001720 |
| | | | Chief William Waterford | FL | | | 80-001724 |
| | | | Darin P. Moran | FL | | | 80-001721 |
| | | | Michael Treubert | FL | | | 80-001723 |
| | | | Sgt. B. Adams | FL | | | 80-001715 |
| 14750 Six Mile Cypress Pkwy. | | Fort Myers | Sgt. Jerry Cantrell | FL | 33912 | 239-477-1000 | 80-001722 |
| 11305 North McKinley Drive | | Tampa | Tpr. L.E. Coggins, Jr. | FL | 33612 | | 80-001731 |
| | | | J. Rartzahm | FL | | | 80-001732 |
| | | | Joan Hermann | FL | | | 80-001743 |
| | | | Sgt Tyler Mathews | FL | | | 80-001742 |
| | | | Cpl. Gregory P. Croucher | FL | | | 80-001741 |
| | | | James Beane | FL | | | 80-001740 |
| 7474 Utilities Road | | Punta Gorda | Cpl. Eric A. Burke | FL | 33982 | 941-258-3947 | 80-001739 |
| | | | Michael S. Woods | FL | | | 80-001737 |
| 219 North Massachusetts Avenue | | Lakeland | Hans Lehman | FL | 33801 | | 80-001865 |
| 7813 Seminole Indian Place | | Macdill AFB | Bruce Klinkel | FL | 33608 | | 80-001866 |



instruments
shipped w/ 1MB
memory. All
returned for
update to 2MB
memory. 1MB
memory evaluated
to 1.7 MB



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

September 29, 2006

Ms. Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

RECEIVED

OCT 09 2006

FDLE
Alcohol Testing Program

Dear Ms. Barfield:

This letter is to inform you that CMI has utilized more than one capacitor for the ring detect circuit in the Intoxilyzer 8000. Both capacitors work equally well for the utilized purpose of coupling to the phone line. When a call is received by the instrument, this capacitor couples the ring signal to a detector in the instrument so that the instrument knows it is receiving a call and that it should "answer the phone".

These capacitors in no way affect the performance, accuracy, or precision of the instruments.

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

Best regards,
Toby S. Hall
Applications Engineering Manager





316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

September 29, 2006

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OCT 09 2006

FDLE
Alcohol Testing Program

Ms. Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

Dear Ms. Barfield,

Regarding your inquiry on the material used between the sample chamber and the end block, all Florida Intoxilyzer 8000's use a gasket made of Viton.

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

A handwritten signature in black ink, appearing to read "Toby S. Hall".

Best regards,
Toby S. Hall
Applications Engineering Manager

INTOXILYZER® ...so you can breathe easier





MPD Companies

FAX TRANSMISSION

TO: *(Name)* Laura Barfield *(Company)* FDLE
(Fax Number) (850) 410-7816

FROM: *(Name)* Pam Hagan *(Return Fax Number)* 270-685-6678

SUBJECT: _____ **COPIES TO:** _____

DATE: October 2, 2006 **Number of Pages:** 3

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FDLE
Alcohol Testing Program



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

September 29, 2006

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Program Manager
Florida Dept of Law Enforcement
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FDLE
Alcohol Testing Program

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September 29, 2006

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1819 Miccosukee Commons
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OCT 03 2006
FDLE
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CMI INC.
316 East Ninth Street
Owensboro, KY 42303
866-835-0690
www.alcoholtest.com

Intoxilyzer® 8000

Users:

Mississippi
Arizona
New Mexico
Florida
San Diego Police Department (CA)
Long Beach Police Department (CA)
Ohio Department of Natural Resources
Utah
Oregon
Pennsylvania
Hawaii
Suffolk County Police Department Highway Patrol (NY)

Approved:

Kansas
West Virginia
Massachusetts
Mississippi
Arizona
New Mexico
Florida
San Diego Police Department (CA)
Long Beach Police Department (CA)
Ohio Department of Natural Resources
Utah
New York State Division of Criminal Justice Services
Oregon
Pennsylvania
Hawaii
Montana
Nevada

Under Evaluation:

Virginia
Arkansas
Indiana
South Carolina
Oklahoma
Washington
November 1, 2006

Barfield, Laura

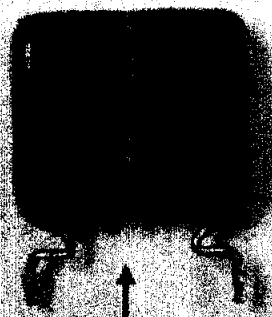
From: Hagan, Pam [pjhagan@alcoholtest.com]

Sent: Friday, October 06, 2006 1:07 PM

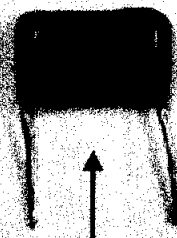
To: Barfield, Laura

Attachments: Ring Detect Capacitors Picture.pdf

10/10/2006



47 Microfarad



.047 Microfarad

Note: Color or color may vary.

Barfield, Laura

From: Hagan, Pam [pjhagan@alcoholtest.com]
Sent: Friday, October 06, 2006 11:10 AM
To: Barfield, Laura
Subject: Intoxilyzer 8000 Case Part Numbers

Original

Cover (Top): 440980
Chassis (Bottom): 440988

Current

Cover (Top): 440980 Rev B
Chassis (Bottom): 440988 Rev A

10/10/2006



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

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OCT 09 2006
FDLE
Alcohol Testing Program

October 5, 2006

Ms. Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

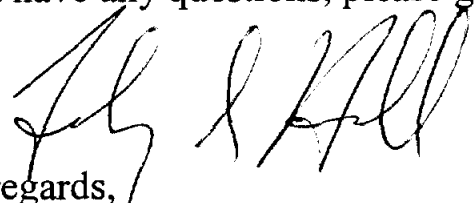
Dear Ms. Barfield:

This letter is to reiterate that Intoxilyzer 8000, Serial Number 80-001175, which was evaluated by FDLE in August of 2006, contained a new revision of the system board. All Florida instruments purchased to date contain system board part number 310338E. The system board contained in 80-001175, evaluated in August 2006, contains 310338G.

The primary purpose for the update was to facilitate the use of a second source microprocessor. Additionally, other items were moved or resized to accommodate improvements in the manufacturing process.

These updates in no way affect the performance, accuracy, or precision of the instruments.

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


Best regards,
Toby S. Hall
Applications Engineering Manager

INTOXILYZER® ...so you can breathe easier





MPD Companies

FAX TRANSMISSION

TO: (Name) Ms. Laura Barfield **(Company)** FDLE
(Fax Number) (850) 410-7816
FROM: (Name) Pam Hagan **(Return Fax Number)** 270-685-6678
SUBJECT: _____ **COPIES TO:** _____
DATE: October 6, 2006 **Number of Pages:** 2



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

October 5, 2006

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OCT 06 2006
FDLE
Alcohol Testing Program

Ms. Laura Barfield
Program Manager
Florida Dept of Law Enforcement
1819 Miccosukee Commons
Tallahassee, FL 32302-1489

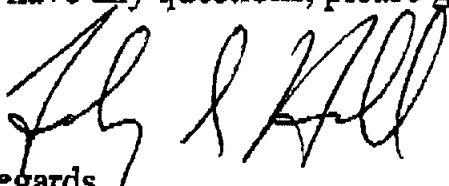
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Applications Engineering Manager

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www.alcoholtest.com

Intoxilyzer® 8000

Make and Model Designation

Intoxilyzer® 8000

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OCT 09 2006

FDLE
Alcohol Testing Program

Method of Analysis

The Intoxilyzer® 8000 utilizes non-dispersive infrared absorption as its principle method of analysis.

Software Version

8100.27

Description of Instrumentation

The Intoxilyzer® 8000 is an infrared-based instrument designed for both mobile and stationary evidential breath alcohol testing.

Specification for Precision

Average standard deviation of 0.003 g/210L or better

Response Prescribed to Denote and Interferent (Visual and Audible)

The Intoxilyzer® 8000 will display INTERFERENT DETECT and a high/low tone will sound.

Response Prescribed to Denote Mouth Alcohol (Visual and Audible)

The Intoxilyzer® 8000 will display SLOPE NOT MET and a high/low tone will sound.

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MPD Companies

FAX TRANSMISSION

| | | | |
|---------------------|-------------------------|----------------------------|---------------------|
| TO: (Name) | <u>Laura Barfield</u> | (Company) | <u>FDLE</u> |
| | | (Fax Number) | <u>850-410-7816</u> |
| FROM: (Name) | <u>Pam Hagan</u> | (Return Fax Number) | <u>270-685-6678</u> |
| SUBJECT: | <u>Intoxilyzer 8000</u> | COPIES TO: | <u></u> |
| DATE: | <u>December 1, 2006</u> | Number of Pages: | <u>1</u> |

Hi Laura,

Hope things are good with you.

The following instruments have not been returned to CMI for memory update:

80-001650 – Lawtey PD
 80-001731 – Florida Highway Patrol Troop C
 80-001737 – Fort Meade PD
 80-001866 – MacDill AFB

Just thought you should know.

Pam

KING & SCHICKLI, PLLC

WARREN D. SCHICKLI
MICHAEL S. HARGIS
ANDREW D. DORRIS
MICHAEL T. SANDERSON

247 NORTH BROADWAY
LEXINGTON, KENTUCKY 40507-1058
(859) 252-0889 TEL
(859) 252-0779 FAX
INFO@IPLAW1.NET

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RELATED CAUSES

PATRICK M. TORRE, PH.D.
BRETT G. CORBLY

OF COUNSEL

J. RALPH KING
JAMES D. LILES

January 25, 2007

Greg A. Tynan, Deputy Chief
County Court Bureau
Office of the State Attorney
Ninth Judicial Circuit of Florida
415 North Orange Avenue
P.O. Box 1673
Orlando, Florida 32802

VIA EMAIL
ORIGINAL BY UPS

Re: Intellectual Property Rights
CMI, Inc.

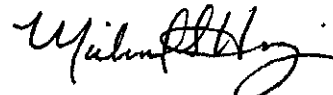
Dear Mr. Tynan:

Enclosed herewith is the Affidavit of Gary J. Braswell, Chairman of the Board of Directors of CMI, Inc., concerning production requests from various defense counsel for the source code for CMI, Inc.'s INTOXILYZER® 8000 breath alcohol testers.

I feel it is important to note that CMI, Inc. further owns certain copyrights under Title 17 of the United States Code in the software for the INTOXILYZER® 8000 breath alcohol testers, and considers the software proprietary information and a trade secret. Disclosure of the software would likewise cause irreparable harm to CMI, Inc.

Very truly yours,

KING & SCHICKLI, PLLC



Michael S. Hargis

MSH/edb
Enclosure

cc: Alan W. Holbrook, Esq.
Sullivan, Mountjoy, Stainback, & Miller, PSC

AFFIDAVIT

Comes Affiant, Gary J. Braswell, and being first duly sworn, states as follows:

1. My name is Gary J. Braswell. I am the Chairman of the Board of Directors of CMI, Inc. ("CMI") located at 316 East 9th Street, Owensboro, Kentucky. CMI is a Kentucky corporation.
2. CMI manufactures, among other goods, INTOXILYZER® 8000 breath alcohol testers. CMI has sold the INTOXILYZER® 8000 breath alcohol tester in several states to various federal, state and local agencies and instrumentalities.
3. CMI owns certain copyrights in the source code for the INTOXILYZER® 8000 breath alcohol testers afforded by Title 17 of the United States Code.
4. CMI considers the source code for the INTOXILYZER® 8000 breath alcohol testers proprietary information and a trade secret of CMI. Disclosure of the source code would cause irreparable harm to CMI.
5. CMI has not disclosed the source code for the INTOXILYZER® 8000 breath alcohol tester to the Florida Department for Law Enforcement or any other of CMI's customers, or individuals outside of CMI.
6. CMI has no written contractual agreement with Florida regarding the sale of INTOXILYZER® breath alcohol testers, but sells its breath alcohol testers based upon purchase orders and sales invoices to customers in Florida.
7. I swear that all of the above statements are true and correct to the best of my knowledge.

CMI, Inc.

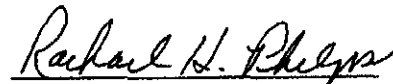
By:




Gary J. Braswell
Chairman of the Board

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIES)

SUBSCRIBED AND SWORN to before me by Gary J. Braswell, Chairman of the Board of CMI, Inc., and known by me to hold such office, for and on behalf of such corporation, on this 25th day of January, 2007.


Notary Public, State at Large
My Commission expires: 10-22-2007

PREPARED BY:


Michael S. Hargis
King & Schickli, PLLC
247 North Broadway
Lexington, KY 40507-1058
(859) 252-0899

Attorney for CMI, Inc.

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

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SEP 26 2007

FDLE
Alcohol Testing Program

Intoxilyzer® 8000
Authorized Service Centers

Florida

Enforcement Electronics
3705 Century Blvd. #2
Lakeland, FL 33811
Contact: Jay Logue
Phone: 800-723-2779

Tech Source
15816 85th Way North
Palm Beach Gardens, FL 33418
Contact: Hal Brunman
Phone: 561-747-8500

Kentucky

(Manufacturer)
CMI, Inc.
316 East Ninth Street
Owensboro, KY 42303
Contact: Service Department
Phone: 866-835-0690

9/26/2007



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

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OCT 05 2007

FDLE
Alcohol Testing Program

September 25, 2007

CMI Customer Communication

Greetings! My name is Toby Hall, President of CMI, Inc. I was appointed president in April of this year. As many of you know, I have been with CMI, Inc. for almost 17 years now. During that time, I have worked in design engineering, manufacturing, sales, and marketing. I have spent time providing training on instrumentation both at CMI and in many of your labs and training facilities. I have truly enjoyed what I have done over the past 17 years and look forward to putting my hands-on experience to good use in continuing to serve you.

I want to thank you for your continued patronage as customers of CMI and am always open to discuss your thoughts on both how we are performing as your supplier and how your needs are changing. CMI strives to meet your needs, allowing you to focus on running your respective programs.

CMI's products are used world-wide in law enforcement and employment related applications and have been approved for use by many internationally recognized bodies (NHTSA, OIML, Home Office (UK), etc.). These products have proven themselves in forensic laboratories and in the field time and time again. A new challenge has arisen, however, that isn't challenging the product's performance per se (because everyone knows that the way to test an instrument's performance is independently with known, traceable standards), but rather the access to intellectual property associated with the breath testing instruments and owned by CMI. Access to this intellectual property is purported to (1) give the viewer insight into the inner workings of the instruments and (2) to allow the viewer to determine whether the instruments are working properly and accurately.

The first reason given above -insight into the inner workings of breath testing instruments- is true and why indeed the intellectual property, i.e., the source code in particular, is very valuable to CMI. Our competitors, both existing and potential (e.g. in developing countries) would gain a significant economic advantage by learning how CMI is able to be so flexible in serving multiple customers while providing quality instruments. The second reason given above -determining whether instruments are working properly and accurately- is, as I have previously stated, not determined by an examination of the source code associated with that instrument. Still, the denial of access to CMI's intellectual property has placed a strain on our customers' resources in supporting their

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programs. Therefore, I am taking actions in support of your programs to allow controlled viewing of our source code.

Over the coming weeks, I intend to provide a means for the review of our most valued intellectual property in a way that will protect our property and interests and provide relief to you, our highly valued customers.

As more information becomes available regarding this matter, I will be back in touch.

Again, I want to thank you all for your continued support of CMI, Inc. With this change in policy, I believe we have taken a positive step in supporting you and your changing needs.

Thank you,

A handwritten signature in black ink, appearing to read 'Toby S. Hall', written in a cursive style.

Toby S. Hall
President
CMI, Inc.

Please find attached, a statement regarding CMI's modified position on the viewing of our intellectual property (source code).



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Fax: 270-685-6678
www.alcoholtest.com

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OCT 05 2007

FDLE
Alcohol Testing Program

**Statement of Corporate Policy Concerning Intellectual Property
Associated with INTOXILYZER® Brand of Breath Alcohol Instruments**

All rights in software, including both source code and object code, used in association with the INTOXILYZER® brand of breath alcohol instruments are considered confidential, proprietary or a trade secret owned by CMI, Inc. Disclosure of the software would cause irreparable harm to CMI, Inc.

Despite the utmost importance of maintaining its software in strict confidence, CMI, Inc. firmly believes that supporting law enforcements' efforts to maintain safe roads and highways for each of its citizens and guests is equally important.

Therefore, CMI, Inc. is adopting a revised corporate policy wherein CMI, Inc. will work with interested parties to provide controlled viewing of its software when ordered by a court of competent jurisdiction. Each interested party, having executed an agreed upon Non-Disclosure Agreement and under Protective Orders provided by CMI, Inc. and issued by the court, will be provided an opportunity to view the software under certain terms designed to protect CMI, Inc.'s rights. A Protective Order and Non-Disclosure Agreement will be provided by CMI, Inc. upon written request made to the attention of the President. The extent of charges will be determined and agreed upon at the time of execution of the Non-Disclosure Agreement.

In this manner, CMI, Inc. can control and protect its valuable intellectual property rights while the issue of CMI, Inc.'s software can be removed as an impediment to law enforcements' abilities to prosecute and convict drivers accused of operating a motor vehicle while under the influence of alcohol. It is the goal of CMI, Inc. that this revised policy coupled with law enforcement's on-going use of the INTOXILYZER® brand of breath alcohol instruments will continue to lower the incidence of drunk drivers on roads and highways.

Further information can be obtained by contacting CMI, Inc.'s president, Toby Hall at the address below.

US Mail:

Toby S. Hall
President, CMI, Inc.
316 East 9th Street
Owensboro, KY 42303

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316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

February 7, 2008

Florida Dept of Law Enforcement
Alcohol Testing Program
PO Box 1489
Tallahassee, FL 32302-1489
Attn: Ms. Laura Barfield, Program Manager

Dear Ms. Barfield:

This purpose of this letter is to advise you the keyboard cable assembly (021295FL) utilized by the Intoxilyzer 8000 is now being purchased from a different vendor. While the function of this assembly remains the same (part number will remain the same), wiring colors have changed. Please reference the included pictures to indicate this physical difference. The effective date for usage of this new keyboard cable assembly is January 28, 2008 (reference engineering change notice CM06-238).

This update in no way affects the performance, accuracy, or precision of the Intoxilyzer 8000.

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

Sincerely,


Pamela J. Hagan
Technical Sales Manager

Attachment

RECEIVED

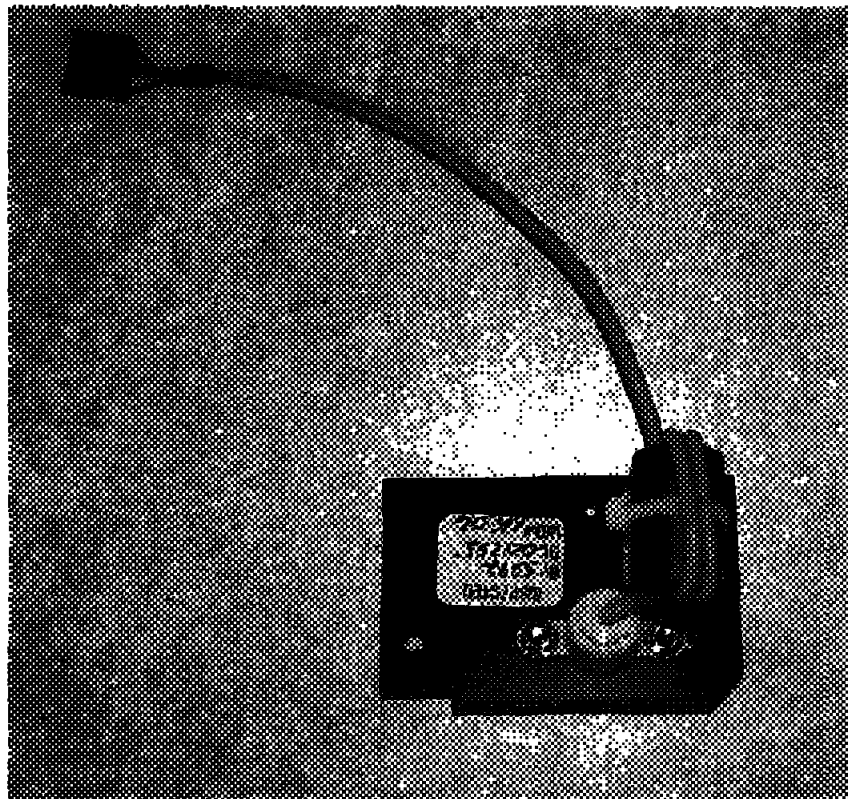
FEB 08 2008 GIB

FDLE
Alcohol Testing Program

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Page 2
Ms. Laura Barfield
February 7, 2008



Keyboard Connector Assembly – Part Number: 021295FL
Effective Usage Date: 1/28/08



Keyboard Connector Assembly – Part Number: 021295FL
Original Connector Assembly



INC.

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

Intoxilyzer® 8000
Authorized Service Centers

Florida

Enforcement Electronics

3705 Century Blvd., #2
Lakeland, FL 33811
Contact: Jay Logue
Phone: 800-723-2779

Kentucky

(Manufacturer)

CMI, Inc.

316 East Ninth Street
Owensboro, KY 42303
Contact: Service Department
Phone: 866-835-0690

3/12/2008

KING & SCHICKLI, PLLC

WARREN D. SCHICKLI
MICHAEL S. HARGIS
ANDREW D. DORISIO
MICHAEL T. SANDERSON

247 NORTH BROADWAY
LEXINGTON, KENTUCKY 40507-1058
(859) 252-0889 TEL
(859) 252-0779 FAX
INFO@IPLAW1.NET

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COPYRIGHT
RELATED CAUSES

PATRICK M. TORRE, PH.D.
BRETT G. CORSELY

OF COUNSEL

J. RALPH KING
JAMES D. LILES

January 25, 2007

Greg A. Tynan, Deputy Chief
County Court Bureau
Office of the State Attorney
Ninth Judicial Circuit of Florida
415 North Orange Avenue
P.O. Box 1673
Orlando, Florida 32802

VIA EMAIL
ORIGINAL BY UPS

Re: Intellectual Property Rights
CMI, Inc.

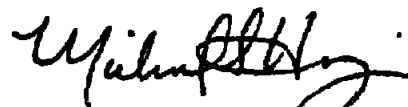
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Very truly yours,

KING & SCHICKLI, PLLC



Michael S. Hargis

MSH/edb
Enclosure

cc: Alan W. Holbrook, Esq.
Sullivan, Mountjoy, Stainback, & Miller, PSC

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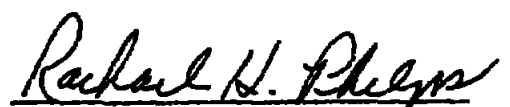
CMI, Inc.

By:

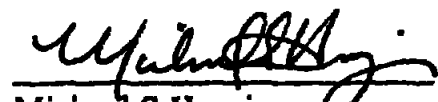

Gary J. Braswell
Chairman of the Board

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIES)

SUBSCRIBED AND SWORN to before me by Gary J. Braswell, Chairman of the Board of CMI, Inc., and known by me to hold such office, for and on behalf of such corporation, on this 25th day of January, 2007.


Notary Public, State at Large
My Commission expires: 10-22-2007

PREPARED BY:


Michael S. Hargis
King & Schickli, PLLC
247 North Broadway
Lexington, KY 40507-1058
(859) 252-0899

Attorney for CMI, Inc.



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

September 25, 2008

Ms. Laura D. Barfield, Manager
FDLE - Alcohol Testing Program
P.O. Box 1489
Tallahassee, FL 32302

RECEIVED
SEP 30 2008
FDLE
Alcohol Testing Program

Subject: CMI, Inc. Intoxilyzer 8000 Filters

Dear Ms. Barfield:

This letter is responsive to your requests for answers to a list of six questions posed in your August 30, 2008 correspondence to CMI, Inc. regarding the above captioned matter.

- Q. Is the CMI, Inc. Intoxilyzer 8000 used in the state of Florida listed on the US Department of Transportation Conforming Products List of Evidential Breath Measurement Devices?**
- A. Yes. The Intoxilyzer 8000 is listed on the US Department of Transportation Conforming Products List of Evidential Breath Measurement Devices.**
- Q. Is there more than one make, brand and model of CMI, Inc. Intoxilyzer 8000?**
- A. While the Intoxilyzer 8000 is configured with different features and options for different customers, there is only one model Intoxilyzer 8000 made and sold in the United States.**
- Q. What is the micron wavelength of each filter used in the Intoxilyzer 8000?**
- A. There are two IR filters in the Intoxilyzer 8000, one at 9.376 μm and the other at 3.476 μm .**
- Q. Were the same micron wavelength filters in the Intoxilyzer 8000(s) sent to the US Department of Transportation in 2001 for evaluation and inclusion on the Conforming Products List? And again in the instruments sent for software version 8100.26 and 8100.27 evaluation by the US DOT in 2007?**

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- A. These same filters were in the instruments sent to DOT in each of the occasions you have listed.
- Q. **Have the micron wavelength of the filters ever changed?**
- A. Since the submission and approval of the Intoxilyzer 8000 by the US Department of Transportation, the filter wavelengths have been the same.
- Q. **Can you explain the discrepancies between the micron wavelength of the filters listed in the CMI, Inc. Intoxilyzer brochure, the CMI, Inc. Instrument Specifications Summary, the CMI, Inc. Intoxilyzer 8000 Parts List, and the information listed in the Federal Register?**
- A. The parts list has the information used to describe the parts in the system. It has the specific, correct information on the filter center frequencies. The other CMI sales and marketing literature makes general references to the filter center frequencies for publication purposes. CMI, Inc. did not generate the Federal Register document but it appears to have used general references as well.

Please let me know if you have any other questions.

Sincerely,



Toby S. Hall
President, CMI, Inc.



SULLIVAN. MOUNTJOY, STAINBACK & MILLER PSC

ATTORNEYS AT LAW

Ronald M. Sullivan

Jesse T. Mountjoy

Frank Stainback

James M. Miller

Michael A. Fiorella

Allen W. Holbrook

R. Michael Sullivan

Bryan R. Reynolds

Tyson A. Kamuf

Mark W. Starnes

C. Ellsworth Mountjoy

Susan Montalvo-Gesser

November 26, 2008

Laura Barfield
Florida Department of Law Enforcement
Alcohol Testing Program
P.O. Box 1489
Tallahassee, FL 32302

Re: State of Florida v. Witte
Case No. 2008-CT-004176-SC (Sarasota County)

Dear Ms. Barfield:

For purposes of the above-referenced case, I am enclosing a copy of the Order entered by Daviess District Judge Joseph Castlen on November 20, quashing Ms. Mack's purported subpoenas duces tecum to CMI, Inc. I notified Ms. Mack, as well as Assistant State Attorney Ganderton, of this action on November 20, and sent both of them a copy of this same Order.

Since the underlying issue, apparently, involved a communication on the telephone between an FDLE employee Venturi and CMI technician Faulkner, I did inquire of CMI to determine the action taken at CMI's end in Kentucky. I attach a copy of a memo from Mr. Faulker to Mr. Christie dated November 14, in that regard. All of this is as a courtesy to you, and to the State Attorney, and is without waiver of any of CMI's claims that it is otherwise not subject to discovery proceedings in Florida cases, much less subpoenas issued in Florida that end up being served on CMI in Kentucky via NRAI.

Please let me know if you have any questions.

Sincerely yours,



Allen W. Holbrook

AWH/ej
Enclosures
cc: David Ganderton, Esq. (w/enc.)

Telephone (270) 926-4000

Telecopier (270) 683-6694

100 St. Ann Building

PO Box 727

Owensboro, Kentucky

42302-0727

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FDLE
Alcohol Testing Program

SULLIVAN, MOUNTJOY, STAINBACK & MILLER PSC
ATTORNEYS AT LAW

Ronald M. Sullivan
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Tyson A. Kamuf
Mark W. Sornes
C. Ellsworth Mountjoy
Susan Montalvo-Gesser

November 20, 2008

Kerry Mack, Esq.
The Mack Law Firm
2022 Placida Road
Englewood, FL 34224-5204

Re: State of Florida v. Witte
Case No. 2008-CT-004176-SC
(Daviess District Court Case No. 06-C-01500)

Dear Ms. Mack:

You neither filed an appearance nor a response to the motion to quash that was heard by the Daviess District Court today. Please find enclosed a copy of the Order on CMI's Supplemental Motion to Quash.

Please let me know if you have any questions.

Sincerely yours,

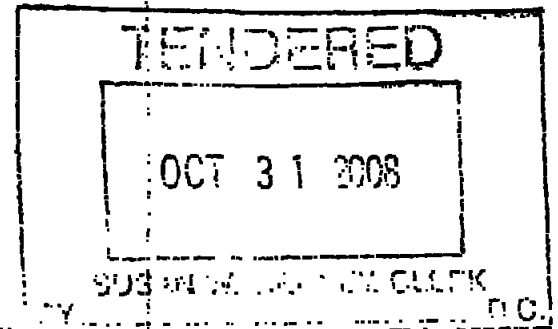

Allen W. Holbrook

AWH/cjb
Enclosure
cc: CMI, Inc. (w/attachment)
David Ganderton, Esq. (w/attachment)

Telephone (270) 926-4000
Telecopier (270) 683-6694

100 St. Ann Building
PO Box 727
Owensboro, Kentucky
42302-0727

COMMONWEALTH OF KENTUCKY
DAVIESS DISTRICT COURT
DIV. III
CASE NO. 06-C-01500



IN RE:

State of Florida v. Christine Adkins (# 05-2043 T)
State of Florida v. William J. Sutton (# 04-1146 T)
(Charlotte County, Florida)

And

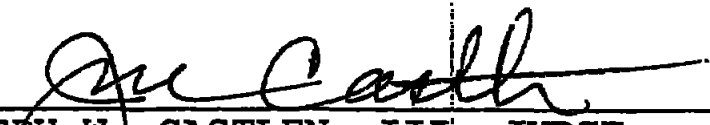
State of Florida v. Witte (# 2008-CT-004176-SC)
(Sarasota County, Florida)

ORDER ON CMI'S SUPPLEMENTAL MOTION TO QUASH


CMI having moved to quash a separate subpoena, in the State v. Witte case, and the Court being sufficiently advised that said subpoena was issued by the same counsel as was involved in the Adkins and Sutton cases, CMI's Motion is SUSTAINED.

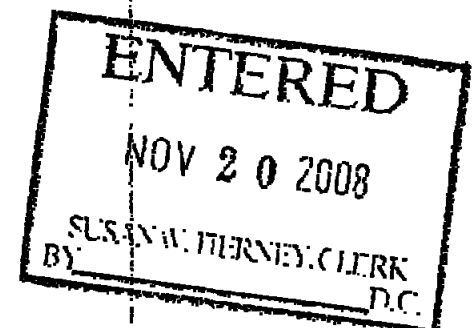
The subpoena in the Witte case is quashed retroactive to August 19, 2008.

This 20 day of November, 2008.


JOSEPH W. CASTLEN, III, JUDGE
DAVIESS DISTRICT COURT, DIV. III

TENDERED BY:


Allen W. Holbrook
SULLIVAN, MOUNTJOY, STAINBACK,
& MILLER, P.S.C.
100 St. Ann Street
P.O. Box 727
Owensboro, Kentucky 42302-0727
(270) 926-4000
Counsel for CMI, Inc.





316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

MEMORANDUM

TO: Steve Christie
FROM: Brian Faulkner ^{BF}
DATE: November 14, 2008
SUBJECT: Instrument 80-001723

This is in response to your recent inquiry regarding my action taken on the above identified Florida I-8000 instrument back on February 12, 2008.

FDLE's George Venturi contacted CMI on February 12, 2008 concerning an anomaly with instrument 80-001723.

Mr. Venturi indicated that after the instrument had uploaded its records to Tallahassee, the instrument then displayed several memory exceptions.

CMI connected to the instrument remotely (via telephone modem) from the engineering lab and through this method of communication verified that the instrument contained no records. This supported Mr. Venturi's description of the upload to Tallahassee.

Once CMI had confirmed that no records remained on the instrument, the memory exceptions were then cleared and the instrument re-enabled. The instrument was then disconnected from the modem hookup.

The diagnostic operations performed by CMI could have been performed by George Venturi. However, he had requested that CMI corroborate, by its own interface with the instrument through the modem connection, that the records were no longer on the instrument.

Please let me know if you have any further questions.





316 E. 9th St.
Owensboro, KY 42303
1-888-835-0890
Fax: 270-685-6678
www.alcoholtest.com

FAX TRANSMISSION

TO: Ms. Laura Barfield **(Company)** Florida Dept. Law Enforcement
(Fax Number) (850) 921-3787

FROM: CMI, Inc.
316 E. 9th Street
Owensboro, KY 42303

SUBJECT: Schofield Affidavit **COPIES TO:** None
Micron Filter Wavelengths

DATE: July 27, 2009 **Number of Pages:** 4

Laura:

An original signed copy of my letter and a copy of my affidavit regarding the center wavelengths of filters will follow by regular mail.

Bill

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Fax: 270-685-6678
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July 27, 2009

-SENT VIA FACSIMILE AND REGULAR MAIL-

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

Subject: William S. Schofield Affidavit
Re: Center Wavelengths of Filters

Dear Laura:

It has come to my attention that some defense attorneys are seeking to challenge the approval of the Intoxilyzer 8000 units claiming that the micron bands in use are different than those approved. To that end, enclosed please find an affidavit previously executed by me on this subject. I hope this affidavit is helpful.

Sincerely,

A handwritten signature in cursive script that reads "William S. Schofield".

William S. Schofield
Manager – Engineering
CMI, Inc.

WSS/lsc

Enclosure



AFFIDAVIT

Comes the Affiant William Schofield, and being first duly sworn states as follows:

1) My name is William Schofield. I am the Manager of Engineering for CMI, Inc., located at 316 East 9th Street, Owensboro, Kentucky.

2) I have held this position with CMI for over 20 years.

3) CMI manufactures, among other things, the Intoxilyzer 8000. CMI sells this product throughout the United States. It has sold the Intoxilyzer 8000 to the Florida Department of Law Enforcement for use by law enforcement agencies and offices throughout Florida.

4) As part of my duties as Manager of Engineering, I have custody of certain documents, including documentation for the Intoxilyzer 8000.

5) Part of this documentation consists of Infrared Filter specifications. These specifications define the center wavelength of the Infrared filters with three decimal place accuracy.

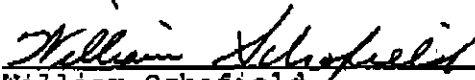
6) The Intoxilyzer 8000 uses two narrowband Infrared filters. These filters have center wavelengths at 3.476 microns and 9.376 microns.

7) Filters with these center wavelengths have been used in all Intoxilyzer 8000 instruments, including all Intoxilyzer 8000 instruments evaluated and approved by the US Department of Transportation and all Intoxilyzer 8000 instruments used in the State of Florida.

8) I have personal knowledge of the matters set forth in this Affidavit.

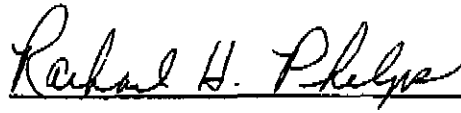
9) I swear or affirm that all of the above statements are true and correct to the best of my knowledge and belief.

This 6 day of July, 2009.


William Schofield
Title: Manager of Engineering,
for CMI, Inc.

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

Subscribed and sworn to before me by William Schofield, Manager of Engineering for CMI, Inc., on this 6th day of July, 2009.


Notary Public, State at Large
My commission expires: 10-22-2011



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

July 27, 2009

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FDLE – Alcohol Testing Program
P.O. Box 1489
Tallahassee, FL 32302

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Sincerely,

William S. Schofield
Manager – Engineering
CMI, Inc.

WSS/lsc

Enclosure

RECEIVED

AUG 4 2009

FDLE
Alcohol Testing Program



AFFIDAVIT

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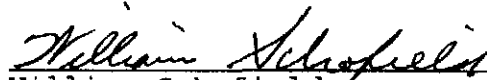
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8) I have personal knowledge of the matters set forth in this Affidavit.

9) I swear or affirm that all of the above statements are true and correct to the best of my knowledge and belief.

This 6 day of July, 2009.


William Schofield
Title: Manager of Engineering,
for CMI, Inc.

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

Subscribed and sworn to before me by William Schofield, Manger of Engineering for CMI, Inc., on this 6th day of July, 2009.



Notary Public, State at Large
My commission expires: 10-22-2011

Barfield, Laura

From: Hall, Toby [tshall@alcoholtest.com]
Sent: Wednesday, October 14, 2009 6:35 PM
To: Barfield, Laura
Cc: eguedes@wsh-law.com; Allen Holbrook; Eason, Linton
Subject: Software letter re: 8100.26 and 8100.27
Attachments: Letter to Laura Barfield October 14, 2009.pdf

Laura,

Please find the attached letter. Please give me a call if you have any questions.

Thank you,
Toby

10/19/2009



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

October 14, 2009

Ms. Laura Barfield
Program Manager
Florida Department of Law Enforcement
2729 Fort Knox Building 2
Suite 1200
Tallahassee, FL 32308

VIA EMAIL AND OVERNIGHT DELIVERY

Re: **Restricted Licenses for Intoxilyzer 8000 Operating Software
Versions 8100.26 and 8100.27**

Dear Ms. Barfield:

It has been brought to the attention of CMI, Inc. the Florida Department of Law Enforcement ("FDLE") intends to schedule a "viewing" of the Intoxilyzer 8000 operating software, versions 8100.26 and 8100.27 (the "Software"), so as to permit members of the criminal defense bar and their experts to view the bit and byte pattern of both versions of the Software. It is also our understanding that this viewing is being conducted in response to the court's decision in *State v. McGratty, et al.*, Case No. 07-AP-38. It remains unclear to CMI how or why it was possible for the trial court to authorize such a viewing in light of the unequivocal language of the Restricted License pursuant to which FDLE has access to the Software. As you know, the Restricted License expressly prohibits such disclosure:

3. CONFIDENTIALITY

If the Licensed Software is identified as being Restricted in any way, the Licensed Software will be treated as a proprietary trade secret of CMI, and Licensee shall hold it in strictest confidence without disclosure to another individual or party during the term, or for twenty (20) years after termination, of this Agreement.

CMI certainly expects that FDLE would have argued to the trial court that such language precludes the disclosure about to take place.

To be clear, CMI considers *any* disclosure of the Software, including the one about to take place, to constitute a serious violation of the Restricted License. CMI's position in this letter should not be construed as a waiver or acquiescence in any future disclosures of the Software. Having said that, CMI appreciates the difficult position that FDLE finds itself in at the present time. As such, and subject to the conditions set forth

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below, CMI will not take affirmative action on this occasion to prevent the viewing of the Software pursuant to the *McGratty* decision.

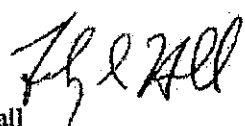
FDLE shall take all measures possible to safeguard the confidentiality of the Software during the viewing. No defense lawyer or expert should be permitted to bring into the room where the viewing is to take place any electronic equipment or storage media (CD's, flash drives, digital camera equipment, laptops, etc.), and the viewing must be supervised at all times. Under no circumstances should anyone participating in the viewing be permitted to install any device or software (including, but not limited to, decompilers) on the PC to be used for the viewing.

Notwithstanding the above-stated position and immediately upon the conclusion of the forthcoming viewing of the Software, CMI will declare a breach of the Restricted License associated with version 8100.26 of the Software and will terminate the Restricted License. FDLE is to return *all* materials related to version 8100.26 of the Software, including but not limited to, any manuals, disks, copies or other documentation. Any copies of version 8100.26 of the Software that may exist in FDLE computers or data storage devices shall be immediately and permanently deleted.

CMI would request that in the future it be informed of any efforts by any party to obtain access to the Software with sufficient time to allow CMI to take appropriate steps to protect its proprietary information and assets. CMI does not wish to learn about the disclosure requests after an appellate court has already rendered a decision adversely affecting CMI's interests. At a minimum, CMI would expect that FDLE and its representatives, in accordance with FDLE's contractual obligations, would affirmatively argue against the disclosure of the Software, citing the explicit language of the Restricted License associated with version 8100.27 of the Software.

CMI does not take this position lightly or without considerable deliberation as to its effects on FDLE. CMI has always enjoyed and valued its close working relationship with FDLE and other law enforcement agencies in Florida. We simply ask that there be a heightened sensitivity to the important confidentiality interests associated with use of the Software. Should you or anyone at FDLE have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,



Toby S. Hall
President

Cc: Linton Eason, Esq. (via email)
Allen Holbrook, Esq. (via email)
Edward G. Guedes, Esq. (via email)



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OCT 15 2009

FDLE
Alcohol Testing Program

October 14, 2009

Ms. Laura Barfield
Program Manager
Florida Department of Law Enforcement
2729 Fort Knox Building 2
Suite 1200
Tallahassee, FL 32308

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Sincerely,



Toby S. Hall
President

Cc: Linton Eason, Esq. (via email)
Allen Holbrook, Esq. (via email)
Edward G. Guedes, Esq. (via email)

Comes the Affiant Brian Faulkner, and being first duly sworn, states as follows:

1. My name is Brian Faulkner. I am the Manager of Engineering for CMI, Inc., located at 316 East 9th Street, Owensboro, KY. I hold a B.S. in Electrical Engineering and have 12+ years experience as an electrical engineer including 8+ years in embedded systems development. During my tenure at CMI, Inc. I have held the positions of Electronics Engineer and Senior Electronics Engineer before my current position as Manager of Engineering.
2. I have personal knowledge of the facts set forth in this affidavit.
3. In my capacity as a CMI engineer, I have become familiar with the testing protocols of the National Highway Traffic Safety Administration and the breath-alcohol requirements of Florida and other jurisdictions in the United States.
4. I have also carefully reviewed the affidavit of Dr. Harley Myler's affidavit dated April 19, 2007 ("Myler Affidavit").
5. I am fully aware of all operational aspects of the Intoxilyzer 8000, both with respect to its hardware and software. The Intoxilyzer 8000 uses an AMD188 microprocessor, and its software is written in C/C++.

6. The Intoxilyzer 8000 utilizes both hardware and software together to measure and quantify ethanol in a vaporous solution. This combination of hardware and software does not render an opinion, but rather reports an analytical measurement.
7. The accuracy of this analytical measurement can be verified without examination of the source code. In fact, examination of the source code would not reveal whether the analytical measurement was accurate. This can only be accomplished by other well established scientific methods, such as introducing a sample of a known NIST Traceable ethanol concentration and verifying that the instrument accurately reports the correct measurement.
8. I am familiar with the published findings of the National Safety Council's Committee on Alcohol and Other Drugs on the issue of the discovery demands for source code:

[A]ccess to the Source Code of the software of an evidential breath-alcohol analyzer is not pertinent, required, or useful for examination or evaluation of the analyzer's accuracy, scientific reliability, forensic validity, or other relevant characteristics, or of the trustworthiness and reliability of analysis results produced by the analyzer. These matters can be and have been fully assessed and examined by multiple other well established and recognized methods and procedures in common use worldwide;....

9. The National Highway Traffic Safety Administration (NHTSA) performs testing of breath alcohol instruments according to the "Model Specifications for Devices to Measure Breath Alcohol" (Model Specifications) for the

purpose of approving instruments to be published on the “Conforming Products List of Evidential Breath Alcohol Devices” in the Federal Register. The testing performed by NHTSA is intended to verify that the design of the hardware and software that produces an analytical result conforms to a set of rigorous performance standards, which include accuracy and precision. This testing is intended to verify the design of the analytical performance of the instrument. NHTSA does not require the source code to determine an instrument’s accuracy, precision, or any other performance criteria set forth by the Model Specifications.

10. Examination of the source code would not and could not indicate whether the instrument in use for a particular test was or was not affected by any external influence factors such as interfering substances, mouth alcohol, ambient alcohol in the room air, purge failure, improper sample, or radio frequency interference. Nor would the source code indicate whether the instrument was in calibration, whether the results were within 0.020 of each other, or if minimum volume was achieved. The instrument’s ability to detect and/or account for any of the above influence factors and conditions can be verified only through functional testing.

11. A volume of 1.1 liters of breath is used as the minimum recommended volume only in order to ensure that the sample analyzed is from the ‘deep

lung' region. This minimum breath volume criterion of 1.1 liters is widely used across the U.S. However, a different minimum criterion for breath volume is perfectly acceptable. Jurisdictions are free to establish their own minimum volume requirements. Several other U.S. jurisdictions use different criteria. The instrument will always give an accurate measurement of the ethanol that is in the sample chamber.

12. Several purported 'software flaws' pertained to the minimum volume criterion. In each of these cases the volume was accurately measured and reported. However, the appropriate message for whether or not the minimum volume had been reached was misreported. This was limited to the few cases (less than 1% of breath tests in Florida at the time) where the subject was allowed to provide a sample that extended beyond the three-minute testing window.

13. It can be, and has been, determined which tests are affected by the above scenario without examination of the software. This can be determined by examination of the test records from the instrument. I am aware that the Florida Department of Law Enforcement (FDLE) has identified each and every such occurrence and has disseminated this information via letters to the appropriate agencies throughout the state.

14. There are references in the Myler Affidavit indicating instances where the reported volume was 0.0 liters, yet an ethanol reading was produced. The instrument is operating properly in these cases. This is caused by the subject blowing into the instrument a volume of less than 1.1 liters, stopping, then producing a quick puff of air. This puff of air resets the volume to 0.0 liters, however none of the introduced breath sample has been displaced from the sample chamber. Thus the instrument reports a volume of 0.0 liters and a breath alcohol level. The instrument correctly identifies this scenario as being an insufficient volume sample and the alcohol level is reported in a footnote with a message stating "Volume Not Met (x.xxx – Breath Sample Not Reliable to Determine Breath Alcohol Level)".

15. There are also references to instances where the reported duration for a breath sample is four minutes. This is inaccurate. Nowhere on any test reports in Florida is the duration of the breath sample reported. It is assumed that the breath sample duration is calculated by subtracting the timestamp of the breath sample from the timestamp of the air blank before the breath sample. However, this is an incorrect assumption. The start of the breath sample does not occur at the instant the air blank ends. There are a few seconds that elapse from the end of the air blank to the start of the breath sample. Due to this additional elapsed time and the fact that seconds are not

reported in the timestamps, it could appear that 4 minutes elapsed from the end of the air blank to the end of the breath sample.

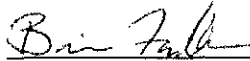
16. In his affidavit, Dr. Myler asserts that the minimum wait time of two minutes between air blanks has been violated in some instances. This, also, is incorrect. The Florida requirement is that there be at least a two minute wait between breath samples, not air blanks between breath samples.
17. Concerning recalibration of instruments, Dr. Myler's affidavit claims that without the source code it cannot be determined if any changes were made that require the instrument to be recalibrated. Actually, this can be determined using standard scientific methods to verify that the instrument's calibration has not been affected. I'm aware that this was actually performed by FDLE on the occasions that changes were made to the source code – even though the changes did not affect the instrument's calibration.
18. Finally, Dr. Myler's affidavit claims that without the source code one cannot determine if the software has changed since 2002, the extent of these changes, or whether the changes affected the reliability or operation of the instrument. This is incorrect. The source code in use as of this date has undergone revisions since 2002. These changes and the extent of these changes are plainly evident and observable by testing of the instrument's operation and examination of the instrument's printed output. Furthermore,

the software version is printed on the breath test affidavit and also reported via the instrument's menu system. The reliability, accuracy, and precision of the instrument can only be determined by functional testing of the instrument, not by examination of the source code. This approval testing was performed by FDLE before every software update that was programmed into instruments for field use.

19. None of the changes that have been made to the source code for the Intoxilyzer 8000 have related to the analytical functions of the instrument.
20. To further confirm that the updates to the Florida revision of software have had no affect on the Intoxilyzer 8000's accuracy and precision, instruments containing Florida software were submitted to NHTSA for testing for conformance to the Model Specification. The conclusion by NHTSA was that the Intoxilyzer 8000 with Florida specific software met all applicable performance requirements for accuracy and precision and that "the software changes did not affect the precision and accuracy."

FURTHER AFFIANT SAYETH NAUGHT.

This 5th day of February, 2010.

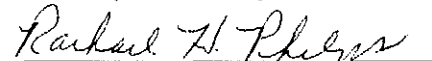


Brian Faulkner

Title: Manager – Engineering
CMI, Inc.

COMMONWEALTH OF KENTUCKY)
COUNTY OF DAVIESS)

Subscribed and sworn to before me by Brian Faulkner, Manager –
Engineering for CMI, Inc., on this 5th day of February, 2010.



Notary Public, State at Large

My commission expires: 10-22-2011

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Tuesday, April 06, 2010 12:38 PM
To: Barfield, Laura; Eason, Linton
Subject: FW: CMI Response re Production Of Software Disk for Version 8100.27
Importance: High
Attachments: Letter to FDLE Re Production Of Software Disk 4-6-10.pdf

My apologies. I neglected to attach the letter!

Ed



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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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From: Edward G. Guedes
Sent: Tuesday, April 06, 2010 11:57 AM
To: 'Barfield, Laura'; Eason, Linton
Cc: Cliff Ramey
Subject: CMI Response re Production Of Software Disk for Version 8100.27
Importance: High

Dear Laura and Linton,

Attached is CMI's response regarding the *Nesbitt* court's order directed to the State to turn over the software disk for version 8100.27 of the I-8000. The original should follow by overnight mail. Should you have any questions, please don't hesitate to contact me.

Regards,

Ed

4/6/2010



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

VIA OVERNIGHT DELIVERY

Ms. Laura Barfield, Program Manager
Florida Department of Law Enforcement
P.O. Box 1489
Tallahassee, FL 32302

Re: Restricted Licenses for Intoxilyzer 8000 Operating Software Version 8100.27

Dear Ms. Barfield:

It has been brought to the attention of CMI, Inc., the owner of the operating software installed in the Intoxilyzer 8000 (the "Software"), that the State of Florida – and by extension, the Florida Department of Law Enforcement ("FDLE") – has been directed by the Sarasota County Court in *State v. Nesbitt, et al.*, Case No. 2009 CT 1276 NC (as well as in other consolidated cases) to turn over the disk containing Software version 8100.27 to the defendants' counsel and experts in those cases. It remains unclear to CMI how or why it was possible for the trial court to authorize such disclosure in light of the unequivocal language of the Restricted License pursuant to which FDLE has access to the Software. As you know, the Restricted License expressly prohibits such disclosure:

3. CONFIDENTIALITY

If the Licensed Software is identified as being Restricted in any way, the Licensed Software will be treated as a proprietary trade secret of CMI, and Licensee shall hold it in strictest confidence without disclosure to another individual or party during the term, or for twenty (20) years after termination, of this Agreement.

CMI certainly expects that the State would have argued to the trial court that such language precludes the disclosure about to take place.

To be clear, CMI considers *any* disclosure of the Software, including the one about to take place, to constitute a serious violation of the Restricted License. CMI's position in this letter should not be construed as a waiver or acquiescence in any future disclosures of the Software. Having said that, CMI appreciates the difficult position that FDLE finds itself in at the present time. Moreover, it does not appear to CMI that access to the Software disk for version 8100.27 risks the disclosure of CMI's confidential or proprietary information. As such, and subject to the conditions set forth below,

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Ms. Laura Barfield
Page 2 of 2

CMI will not take affirmative action on this occasion to prevent the disclosure of the Software disk for version 8100.27, pursuant to the *Nesbitt* decision. However, CMI reserves the right to reconsider its position should any further requests be made with respect to production of the Software.

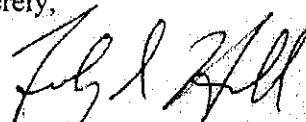
Moreover, in light of the fact that the production at issue constitutes a breach of the Restricted License, we are requesting that FDLE return to CMI all disks or materials currently in the possession of FDLE relating to any other version of the Software. Because version 8100.27 is currently being used in Florida instruments, our foregoing request for a return of CMI's proprietary materials does *not* extend to version 8100.27.

With respect to the production of the disk for version 8100.27, FDLE shall take all measures possible to safeguard the confidentiality of the Software, including enforcing the restrictions imposed by the trial court in connection with the production of the disk. Any and all materials provided by FDLE to defendants' counsel or experts should be recovered at the conclusion of their examination of the disk. The examination of the disk should be supervised, if at all possible, by a representative of FDLE or the State Attorney's office in Sarasota County. Under no circumstances should anyone participating in the examination be permitted to copy or reproduce disk or its contents in any way.

In the future, CMI would expect that FDLE and the State, in accordance with FDLE's contractual obligations, would affirmatively argue against the disclosure of the Software, citing the explicit language of the Restricted License associated with version 8100.27 of the Software. This vigorous defense should include appellate review of any order requiring disclosure of the Software.

CMI does not take this position lightly or without considerable deliberation as to its effects on FDLE or the State of Florida. CMI has always enjoyed and valued its close working relationship with FDLE and other law enforcement agencies in Florida. We simply ask that there be a heightened sensitivity to the important confidentiality interests associated with use of the Software. Should you or anyone at FDLE have any questions regarding this matter, please do not hesitate to contact us.

Sincerely,



Toby S. Hall
President

Cc: Linton Eason, Esq.
Cliff Ramey, Esq.
Allen Holbrook, Esq.
Edward G. Guedes, Esq.



Florida Department of
Law Enforcement

Gerald M. Bailey
Commissioner

Alcohol Testing Program
P.O. Box 1489
Tallahassee, Florida 32302
(850) 617-1290
(850) 921-3787 Fax
<http://www.fdle.state.fl.us>

Charlie Crist, *Governor*
Bill McCollum, *Attorney General*
Alex Sink, *Chief Financial Officer*
Charles H. Bronson, *Commissioner of Agriculture*

April 6, 2010

Mr. Toby S. Hall
President
CMI, Inc.
316 East 9th Street
Owensboro, KY 42303

VIA OVERNIGHT DELIVERY

Subject: Restricted License Agreement for Intoxilyzer 8000 Operating Software Versions

Dear Mr. Hall:

The Florida Department of Law Enforcement (FDLE) is in receipt of your correspondence dated April 6, 2010, regarding the FDLE breach of the Restricted License Agreement for the Intoxilyzer 8000 Operating Software and your request for the return of all disks or materials in the possession of the FDLE relating to software versions other than 8100.27.

In accordance with your request, I have enclosed the compact disc containing Intoxilyzer 8000 Software Version 8100.26, the only other software version in the possession of the FDLE. If you have any questions concerning this information, please feel free to contact me at (850) 617-1290.

Sincerely,

Laura D. Barfield
Alcohol Testing Program Manager

LDB/lb

cc: Ed Guedes, Partner, Weiss, Serota, Helfman, Pastoriza, Cole & Bonsike, P.L.

Attachments: Letter from Toby Hall, President, CMI Inc. Received April 6, 2010
Amended Order On Defendants' Motion for Production of the Source Code

Enclosure: Intoxilyzer 8000 Software Version 8100.26 Compact Disc



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

April 26, 2010

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APR 27 2010

FDLE
Alcohol Testing Program

Florida Dept of Law Enforcement
Alcohol Testing Program
PO Box 1489
Tallahassee, FL 32302-1489
Attn: Ms. Laura Barfield, Program Manager

Dear Ms. Barfield:

Please be advised that the manufacturer of the magnetic card reader in the Intoxilyzer 8000 has informed us that they have discontinued the currently used reader and will be offering an updated reader that is a drop in replacement.

This update in no way affects the performance, accuracy, or precision of the Intoxilyzer 8000.

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

Sincerely,

Brian Faulkner
Engineering Manager
CMI, Inc.

evaluated May 2010 LDB

INTOXILYZER® ...so you can breathe easier



**WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.**

ATTORNEYS AT LAW

A PROFESSIONAL LIMITED LIABILITY COMPANY
INCLUDING PROFESSIONAL ASSOCIATIONS

MIAMI-DADE OFFICE

2525 PONCE DE LEON BOULEVARD

SUITE 700

CORAL GABLES, FLORIDA 33134

TELEPHONE 305-854-0800

FACSIMILE 305-854-2323

WWW.WSH-LAW.COM

BROWARD OFFICE

200 EAST BROWARD BOULEVARD • SUITE 1900

FORT LAUDERDALE, FLORIDA 33301

TELEPHONE 954-763-4242 • FACSIMILE 954-764-7770

*OF COUNSEL

MITCHELL BIERMAN, P.A.
NINA L. BONISKE, P.A.
MITCHELL J. BURNSTEIN, P.A.
JAMIE ALAN COLE, P.A.
STEPHEN J. HELFMAN, P.A.
GILBERTO PASTORIZA, P.A.
MICHAEL S. POPOK, P.A.
JOSEPH H. SEROTA, P.A.
SUSAN L. TREVARTHEN, P.A.
RICHARD JAY WEISS, P.A.
DAVID M. WOLPIN, P.A.

DANIEL L. ABBOTT
AARON BEHAR
GARY L. BROWN
IGNACIO G. DEL VALLE
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DOUGLAS R. GONZALES
EDWARD G. GUEDES
JONATHAN Z. KURRY
MATTHEW H. MANDEL
ALEXANDER L. PALENZUELA-MAURI
ANTHONY L. RECIO
SCOTT A. ROBIN
BRETT J. SCHNEIDER
LAURA K. WENDELL

LORI ADELSON*
LILLIAN M. ARANGO
CARLA M. BARROW*

BROOKE P. DOLARA
RAQUEL ELEJABARRIETA
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JOHN J. KENDRICK III
HARLENE SILVERN KENNEDY
KAREN LIEBERMAN*
JOHANNA M. LUNDGREN
KATHRYN M. MEHAFFEY
MATTHEW PEARL
JOHN J. QUICK
AMY J. SANTIAGO
DANIEL A. SEIGEL
GAIL D. SEROTA*
JONATHAN C. SHAMRES
ESTRELLITA S. SIBILA
ALISON F. SMITH
ANTHONY C. SOROKA
EDUARDO M. SOTO
JOANNA G. THOMSON
MICHELLE D. VOS
JAMES E. WHITE
DEREK R. YOUNG

May 14, 2010

VIA E-MAIL AND FEDERAL EXPRESS

Pat C. Whitaker, Esq.
Assistant State Attorney
P.O. Box 8006
101 Bush Boulevard
Sanford, FL 32771-8006

**Re: State of Florida v. James Harris Selph
Case No. 07-05770-CFA**

Dear Pat:

In response to your letter dated April 22, 2010, which attached correspondence from Stuart Hyman expressing concerns with respect to CMI, Inc.'s ("CMI") offer to provide electronic access to the Intoxilyzer 8000 software and source code (collectively, the "Source Code"), I have discussed Mr. Hyman's letter with CMI and been authorized to represent the company's position as more fully set forth below.

Before turning to Mr. Hyman's concerns, let me respond to your inquiry regarding the need for a Uniform Act certificate under sections 942.01, *et seq.*, Florida Statutes. It is CMI's position that access to the Source Code as proposed by CMI would normally be available solely through invocation of the Uniform Act. However, since the protections of the Uniform Act are intended for the benefit of the witness, the witness may choose to forego those protections in any given instance. Without prejudice to its legal position regarding the mandatory applicability of the Uniform Act or its ability to invoke the protections of the Uniform Act in the future, in the spirit of cooperation, CMI would be willing to forego those protections in *this* instance, only, in order to assist the State.

RECEIVED

MAY 17 2010

**FDLE
Alcohol Testing Program**

Turning to Mr. Hyman's concerns, I would renew my observation that his selected consultant, Dr. Harley Myler, has *already* agreed to comply with CMI's identical proposal in another case and executed the required non-disclosure agreement. Access in that case was subject to precisely the same limitations and protections that I described in my earlier correspondence to you. CMI fails to see why Dr. Myler's electronic access to the Source Code would have been acceptable and adequate for analyzing the Source Code in the other case, but not in this one. Having said that, I will sequentially address each of Mr. Hyman's comments and "conditions" set forth in his April 14, 2010 letter to you.

With respect to Mr. Hyman's observations regarding what occurred in Tallahassee on October 16, 2009, CMI would like the record to be clear. CMI had *no involvement* in the court proceedings that led to the court affording relief to Mr. Hyman's clients in the form of a viewing of the software held by the Florida Department of Law Enforcement ("FDLE"). If Mr. Hyman sought and the court awarded relief that proved ineffectual, it was not the result of CMI's involvement. CMI merely requested that FDLE take appropriate measures to safeguard the software and comply with the restrictive license under which the software is presently used. At no time was CMI approached by Mr. Hyman or FDLE with inquiries regarding the relative value of the relief afforded by the court in that case.¹

As for the various "conditions" Dr. Myler seeks to impose on CMI's proposal for electronic examination of the Source Code, CMI has no problem with providing access to the Source Code for the current, *approved* version of the Intoxilyzer software used in Florida (Item 1). It is also able to provide a general history of changes to the Source Code necessitated by requests from FDLE (Item 3). Beyond that, CMI fails to see what the relevance would be of providing the Source Code for a version of the software that was never implemented in the field.²

CMI is uncertain what Mr. Hyman means by "compilation documentation" in item 2 and cannot respond to that request. CMI would note that it does not have any "data files" that are "required to produce compiled applications for the Intoxilyzer 8000 as it is used in Florida." CMI runs a commercially available compiler program to convert the Source Code into the object code that becomes the operating software for the Intoxilyzer 8000.

¹ Accordingly, CMI sees no need to be responsible "for any expenses incurred" as a precondition for the examination. As Mr. Hyman is aware, a court with proper jurisdiction is always able to sanction a party who fails to comply with its orders.

² As indicated in my earlier letter to you, CMI intends to make available all of the items described in the enclosed sheet entitled "Items Provided," as they may relate to the Intoxilyzer 8000 (rather than the 5000) and the software used in Florida (as opposed to Montana).

Pat C. Whitaker, Esq.
May 14, 2010
Page 3 of 3

In item 4, CMI is unaware of any "specialized applications" developed for use with the compilation of the Source Code. With respect to the distribution and evaluation of the "Florida Intoxilyzer Programs," please see CMI's response to item 6, below.

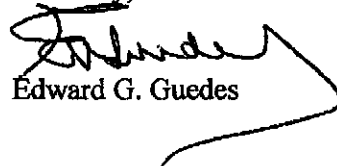
With respect to item 5, a public records request can readily be made by Mr. Hyman or Dr. Myler to FDLE to produce any "software design documentation change orders" FDLE may have issued with respect to the Florida software. CMI would have no objection to FDLE's production of those change orders.

As for item 6, CMI will make available on the computer provided on-site at CMI's headquarters in Owensboro for examination of the Source Code any and all software needed to make electronic access to the Source Code feasible. Because CMI's use of some of the software is subject to licensing -- for example, the commercially available compiler -- CMI cannot copy or provide the software for installation in another computer. However, such software will be available on CMI's computers for use during the examination of the Source Code.

Finally, CMI has no objection to Dr. Myler's use of HexEdit, LINK or Understand as part of his forensic examination. Moreover, CMI understands Mr. Hyman's and Dr. Myler's concerns about ensuring that the Source Code they are examining is the same Source Code for the software installed in the Florida Intoxilyzer 8000 instruments. CMI will take all reasonable measures to assuage these concerns and verify that the Source Code being examined is the correct one. However, CMI cannot agree to Dr. Myler's use of his own equipment³ during the forensic examination, unless he *explicitly* complies with the protections and limitations imposed by the Minnesota and Montana courts with respect to use of an consultant's own equipment. For ease of reference, I have enclosed again a sheet entitled "Terms of Production" that sets forth the restrictions on use of other computer equipment during the examination.

I hope you find this information useful in moving the process forward. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Edward G. Guedes

Encl.

Cc: Mr. Toby Hall, President, CMI, Inc. (w/encl.)
Nola Wright, Esq. (w/o encl.)
Allen Holbrook, Esq. (w/o encl.)

³ This response presupposes that the "equipment" in question is Dr. Myler's laptop computer. However, if other equipment is implicated or to be used in the examination, CMI would need to have that equipment identified in advance.

Barfield, Laura

From: Barfield, Laura

Sent: Saturday, July 17, 2010 10:57 AM

To: garcia_c@sao13th.com; lsammis@sammislawfirm.com; jsammis@sammislawfirm.com

Subject: Contact Information for CMI Attorney

The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

7/19/2010

Barfield, Laura

From: Barfield, Laura
Sent: Saturday, July 17, 2010 11:02 AM
To: eguedes@wsh-law.com
Cc: Eason, Linton
Subject: Source Code Issue in Tampa July 16th
Importance: High

Ed,

There was a source code motion in Tampa on Friday, July 16th. I spoke with the judges regarding the "source code" viewing being set up based on Judge Herr's ruling in Seminole County, and the fact that the source code could be made available for viewing at CMI's facility in Kentucky.

I have given your contact information to the Assistant State Attorney, Candice Garcia, as well as the defense attorneys Leslie and Jason Sammis.

The judges in Tampa have told the state and the defense to work together, along with you, to facilitate the viewing of the source code by Dr. Mylar.

Please let me know if you have any questions concerning this.

Thanks,
Laura

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Saturday, July 17, 2010 11:57 AM
To: Barfield, Laura
Cc: Eason, Linton
Subject: RE: Source Code Issue in Tampa July 16th

I spent two days in Owensboro last week learning about the entire manufacturing process for the Intoxilyzer, including how the source code is handled. I also saw first hand the ongoing forensic examination of the I-5000 source code (re Minnesota litigation). I have a far better appreciation for the difficulties of responding to a generic request to see the source code and how it can happen. If you all need me in order to try to get things resolved, just let me know.



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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]
Sent: Saturday, July 17, 2010 11:02 AM
To: Edward G. Guedes
Cc: Eason, Linton
Subject: Source Code Issue in Tampa July 16th
Importance: High

Ed,

There was a source code motion in Tampa on Friday, July 16th. I spoke with the judges regarding the "source code" viewing being set up based on Judge Herr's ruling in Seminole County, and the fact that the source code could be made available for viewing at CMI's facility in Kentucky.

I have given your contact information to the Assistant State Attorney, Candice Garcia, as well as the defense

7/19/2010

attorneys Leslie and Jason Sammis.

The judges in Tampa have told the state and the defense to work together, along with you, to facilitate the viewing of the source code by Dr. Mylar.

Please let me know if you have any questions concerning this.

Thanks,
Laura

7/19/2010

Barfield, Laura

From: Leslie Sammis [lsammis@sammislawfirm.com]
Sent: Sunday, July 18, 2010 12:34 PM
To: Barfield, Laura
Cc: garcia_c@sao13th.com; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Laura Barfield,

I do need additional information from you. As I understood the court's order from June 16th, the State of Florida has 15 days to file a written response addressing the issue of whether CMI is willing to release the source code to Dr. Myler and the exact terms under which such an exchange would occur. So if you have never asked CMI about the terms under which they would release the source code, the State of Florida is now required to do so.

I suggest that you write CMI a letter explaining what Ms. Garcia is required to file within the 15 day period. You should ask CMI to review the request made by Dr. Myler which I have attached below. You must find out as a preliminary matter if CMI is in possession of each piece of material requested by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I suggest that you ask CMI under what terms they would be willing to release such information to Dr. Myler. If CMI is not in possession of the material requested by Dr. Myler, then you have an obligation to find out which of the items listed below is not possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then they better be willing to articulate their position in writing within the next 15 days. I will eagerly await your response.

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

1. The source code versions for all software that has run in Florida Intoxilyzers to date to include unapproved versions that were used in Florida during pre-approval stages.
2. Source code compilation documentation as well as any data files required to produced compiled applications for the Intoxilyzer 8000 as it is used in Florida. This being the requisite

7/19/2010

compilation data to produce the files contained on distribution CD's as well as executable application files as intended to be downloaded for use in Florida Intoxilyzers.

3. Revision histories detailing changes made to the software for documentation and source code control purposes. Additionally, any source code control data files.
4. Any specialized applications developed for use with the compilation, distribution and evaluation, to include simulators, of the Florida Intoxilyzer programs. If these applications were produced in-house and have bearing on the analytical or reporting aspects of the machine, then the source code used to produce them will be required as well.
5. Software design documentation and change orders specific to Florida Intoxilyzer software.
6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (fx)
409.790.1329 (cl)

NOTE: This e-mail is intended for the addressee(s) only and may contain privileged or confidential information. If you have received this e-mail in error, please send a notification immediately by e-mail.

Harley R. Myler, Ph.D., P.E. invokes privileges incorporated into Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This message should not be construed as a final opinion unless otherwise stated.

On Jul 17, 2010, at 10:57 AM, Barfield, Laura wrote:

The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

7/19/2010

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

Barfield, Laura

From: Garcia, Candace A. [Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: jsammis@sammislawfirm.com; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura – my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday, with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Deadline for the State of Florida to provide CMI's response to Sammis Law firm

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To: Barfield, Laura
Cc: Garcia, Candace A.; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

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2495 Evalon Street
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<http://www.myler.org>
409.838.2327 (ph)
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Phone: (305) 854-0800
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Dear Mr. Guedes,

The Courts in Hillsborough County have proposed a more direct approach. The State of Florida has been ordered to make the following inquiry of CMI:

1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
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CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquire in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

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Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Mylar is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code viewing, also at CMI in Kentucky, being set up through Judge Herr's verbal order out of Seminole County.

Can you contact Ms. Garcia, or can Ms. Garcia contact you, in reference to the items listed below, as well as to begin facilitating the source code viewing by the defense? I believe it would be easier if the counsel for both sides worked directly with you in reference to this. I will remain available to assist, if or when necessary, as well.

Please let me know if this process can begin via contact with Ms. Garcia, representing the State, to answer the questions or needed information for the defense listed below.

Thanks,
Laura

From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: jsammis@sammislawfirm.com; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura – my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday,

with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) –
Deadline for the State of Florida to provide CMI's response to Sammis Law firm
August 9 (hard deadline falls on a weekend so deadline is rolled over to next business day) –
Sammis Law Firm's deadline to provide it's response to CMI's response (the five day response period will begin to run on the date that CMI's response is provided Sammis Law Firm....so if CMI's response is provided on July 23, the Sammis Law Firm's response will be due no later than July 30)

Leslie – My understanding was that you would be drafting an Order which reflects the Court's instructions on Friday. I would like to see a draft of your proposed Order before it is presented to the Court, as it should reflect what our collective understanding of what the Judge's ruling was. Feel free to email it to me at this address, as that will be the most expeditious way to get this done. I look forward to seeing the Order in the next couple days.

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Sent: Sunday, July 18, 2010 12:34 PM
To: Barfield, Laura
Cc: Garcia, Candace A.; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Laura Barfield,

I do need additional information from you. As I understood the court's order from June 16th, the State of Florida has 15 days to file a written response addressing the issue of whether CMI is willing to release the source code to Dr. Myler and the exact terms under which such an exchange would occur. So if you have never asked CMI about the terms under which they would release the source code, the State of Florida is now required to do so.

I suggest that you write CMI a letter explaining what Ms. Garcia is required to file within the 15 day period. You should ask CMI to review the request made by Dr. Myler which I have attached below. You must find out as a preliminary matter if CMI is in possession of each piece of material requested by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I suggest that you ask CMI under what terms they would be willing to release such information to Dr. Myler. If CMI is not in possession of the material requested by Dr. Myler, then you have an obligation to find out which of the items listed below is not possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then they better be willing to articulate their position in writing within the next 15 days. I will eagerly await your response.

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

1. The source code versions for all software that has run in Florida Intoxilyzers to date to include unapproved versions that were used in Florida during pre-approval stages.
2. Source code compilation documentation as well as any data files required to produce compiled applications for the Intoxilyzer 8000 as it is used in Florida. This being the requisite compilation data to produce the files contained on distribution CD's as well as executable application files as intended to be downloaded for use in Florida Intoxilyzers.
3. Revision histories detailing changes made to the software for documentation and source code control purposes. Additionally, any source code control data files.
4. Any specialized applications developed for use with the compilation, distribution and evaluation, to include simulators, of the Florida Intoxilyzer programs. If these applications were produced in-house and have bearing on the analytical or reporting aspects of the machine, then the source code used to produce them will be required as well.
5. Software design documentation and change orders specific to Florida Intoxilyzer software.
6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

--
Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (fx)
409.790.1329 (cl)

NOTE: This e-mail is intended for the addressee(s) only and may contain privileged or confidential

information. If you have received this e-mail in error, please send a notification immediately by e-mail.

Harley R. Myler, Ph.D., P.E. invokes privileges incorporated into Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This message should not be construed as a final opinion unless otherwise stated.

On Jul 17, 2010, at 10:57 AM, Barfield, Laura wrote:

The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Thursday, July 22, 2010 12:19 PM
To: Leslie Sammis
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

We are running into scheduling problems with Mr. Hyman and Dr. Myler in terms of holding our conference call. Pat Whitaker is continuing to try to schedule something. Ms. Sammis, since you are working with Dr. Myler as well, I'm open to suggestions how we make this conference call happen sooner rather than later.

Simply forwarding Dr. Myler's list to CMI, as you suggest in your e-mail, will not suffice. We attempted precisely that when Mr. Hyman provided us with a very similar (if not identical) list of Dr. Myler's "needs" and ended up having a whole host of questions from one side or the other that none of the lawyers could answer. When you write that "CMI, Inc. will either respond in writing to that inquiry within the time allotted or it will refuse to do so," that's not entirely accurate. CMI is not refusing to respond to the inquiry; we would *prefer* to respond to the inquiry meaningfully and in a manner that potentially resolves issues for everyone involved.

If, however, the August 2 deadline is "inflexible" and additional time cannot be obtained, and we are not able to schedule the necessary conference call before then, then CMI will respond to the best of its ability expressing its position as clearly as possible. CMI will continue, notwithstanding any premature response, to continue to try to reach an understanding with Dr. Myler and relevant defense counsel with respect to a forensic examination of the source code.

Regards,

Ed Guedes



**WEISS
 SEROTA
 HELFMAN
 PASTORIZA
 COLE &
 BONISKE, P.L.**

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: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Monday, July 19, 2010 8:51 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Dear Mr. Guedes,

The Courts in Hillsborough County have proposed a more direct approach. The State of Florida has been ordered to make the following inquiry of CMI:

1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
 2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
 3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
4. Additionally, in the event CMI, Inc., is unwilling to release any or all of the source code materials listed in Defendant's Exhibit "B," the terms and conditions under which CMI, Inc., is willing to release any other information related to the source code and specifically, what that information will be.

CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquiry in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

7/25/2010

Sincerely,

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
813-250-0510

On Jul 19, 2010, at 5:31 PM, Edward G. Guedes wrote:

We will endeavor to resolve these issues as quickly as possible. As Dr. Myler is aware, we have been engaged in ongoing discussions with ASA Pat Whitaker and attorney Stuart Hyman in Seminole County to try to resolve the mechanics of conducting the forensic examination in Owensboro, KY. The next step in the process was to be a telephone conference with Mr. Hyman, Dr. Myler, a CMI engineer and myself to discuss the particulars of the information needed. As Mr. Hyman and I quickly learned, the attorneys lack the expertise to meaningfully discuss what's needed without also having the experts participate in the discussion. We found ourselves asking questions of each other that neither of us knew the answer to. CMI has agreed to make its chief engineer available for a telephone conference to discuss with Dr. Myler directly what he perceives is necessary.

I e-mailed ASA Whitaker last week to find out when this call could take place, but I have not yet heard back from him. It's quite possible that he's trying to arrange the date and time for the call with Mr. Hyman. I've copied Pat on this e-mail so he knows this issue is arising also in Hillsborough County.

The response deadline apparently imposed on CMI in this case – without CMI's participation – is somewhat arbitrary, but we will endeavor to meet it in order to keep this process moving forward. I would much rather have a meaningful discussion with Dr. Myler and the CMI engineer on the line, after which the parameters of an inspection can be intelligently addressed, than submit an incomplete response by the deadline (assuming we can't meet the deadline, which I remain hopeful we can).

If defense counsel in *this* case would like to listen in on the conference call with Dr. Myler and the CMI engineer, I don't see that that would be a problem. The primary purpose of the call, though, is to have those individuals who have the technical expertise converse directly with each other about Dr. Myler's needs.

Regards,

Ed



Edward G. Guedes
Partner
Board Certified in Appellate Practice
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From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]
Sent: Monday, July 19, 2010 11:45 AM
To: Edward G. Guedes
Cc: 'garcia_c@sao13th.com'; 'lsammis@sammislawfirm.com'; 'jsammis@sammislawfirm.com'
Subject: FW: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

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Please refer to the attached emails below.

Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Mylar is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code

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Sammis Law Firm, P.A.
1005 N. Marion St.
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[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

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Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

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Laura

7/25/2010

Barfield, Laura

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Sent: Thursday, July 22, 2010 9:53 PM
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Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,

What good would a conference call do if CMI is unwilling to response to Dr. Myler's request in writing in advance? Certainly, responding in writing would make the conference call more productive.

I'll ask you directly, do you know if CMI is in possession of the material contained in Dr. Myler's request?

According to it's website, CMI is a subsidiary company of MPD, Inc.

CMI's sister companies include MPD Components, Inc., MPH Industries, Inc., Lion Laboratories Limited (based in Barry, Wales, United Kingdom) and MPD PTE LTD (based in Singapore). According to the website for MPD, Inc., Lion Laboratories Limited manufactures a broad range of breath alcohol testing instruments that use fuel cell sensors (a technology pioneered by Lion) and infrared spectrometry. The website for MPD, Inc., also states that Lion and CMI represent the "largest organization in breath alcohol analysis in the world today, a field in which they are entirely specialized." Since Lion pioneered the technology, why wouldn't Lion keep the only unencrypted version of the software?

So don't you think it is possible that CMI only has an encrypted version of the source code? Laura Barfield is in possession of only an encrypted version of certain Florida specific software. In fact, Dr. Myler traveled to Tallahassee only to find out that the only thing available was an encrypted version of certain software. So, CMI and FDLE intentionally wasted Dr. Myler's time and Mr. Hyman's money. If CMI and FDLE didn't know that only an encrypted version of the software was available, then that must mean that CMI doesn't possess an unencrypted version (or will eventually claim not to possess it).

Why should anyone assume that CMI is even capable of releasing an unencrypted version of the source code? What if the unencrypted version of the source code is in the United Kingdom or Singapore?

In fact, your own website says that you represent a "multi-national corporate manufacturer" of breath testing equipment. Let's find out if an unencrypted version of the software is even located in this nation.

Before we all waste time waiting on a conference call, why don't you ask CMI to confirm in writing whether it is in possession of the material requested by Dr. Myler at it's facility in Kentucky? Then ask them if they are willing to release it. If so, ask them what terms and condition they would impose on the exchange. Put that in writing first, then any other issues can be discussed in the conference call.

Sincerely,

7/25/2010

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602

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Regards,

Ed Guedes



Edward G. Guedes
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Tax Advice Disclosure: To ensure compliance with requirements imposed by the IRS under Circular 230, we

7/25/2010

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Importance: High

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1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
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I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

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Tampa, FL 33602
813-250-0500

On Jul 19, 2010, at 5:31 PM, Edward G. Guedes wrote:

We will endeavor to resolve these issues as quickly as possible. As Dr. Myler is aware, we have been engaged in ongoing discussions with ASA Pat Whitaker and attorney Stuart Hyman in Seminole County to try to resolve the mechanics of conducting the forensic examination in Owensboro, KY. The next step in the process was to be a telephone conference with Mr. Hyman, Dr. Myler, a CMI engineer and myself to discuss the particulars of the information needed. As Mr. Hyman and I quickly learned, the attorneys lack the expertise to meaningfully discuss what's needed without also having the experts participate in the discussion. We found ourselves asking questions of each other that neither of us knew the answer to. CMI has agreed to make its chief engineer available for a telephone conference to discuss with Dr. Myler directly what he perceives

is necessary.

I e-mailed ASA Whitaker last week to find out when this call could take place, but I have not yet heard back from him. It's quite possible that he's trying to arrange the date and time for the call with Mr. Hyman. I've copied Pat on this e-mail so he knows this issue is arising also in Hillsborough County.

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Regards,

Ed



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
www.wsh-law.com
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From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]
Sent: Monday, July 19, 2010 11:45 AM
To: Edward G. Guedes
Cc: 'garcia_c@sao13th.com'; 'lsammis@sammislawfirm.com'; 'jsammis@sammislawfirm.com'
Subject: FW: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,
Please refer to the attached emails below.

Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Mylar is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code viewing, also at CMI in Kentucky, being set up through Judge Herr's verbal order out of Seminole County.

Can you contact Ms. Garcia, or can Ms. Garcia contact you, in reference to the items listed below, as well as to begin facilitating the source code viewing by the defense? I believe it would be easier if the counsel for both sides worked directly with you in reference to this. I will remain available to assist, if or when necessary, as well.

Please let me know if this process can begin via contact with Ms. Garcia, representing the State, to answer the questions or needed information for the defense listed below.

Thanks,
Laura

From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: jsammis@sammislawfirm.com; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura – my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday, with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) –
Deadline for the State of Florida to provide CMI's response to Sammis Law firm
August 9 (hard deadline falls on a weekend so deadline is rolled over to next business day) –
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period will begin to run on the date that CMI's response is provided Sammis Law Firm....so if CMI's
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Leslie – My understanding was that you would be drafting an Order which reflects the Court's
instructions on Friday. I would like to see a draft of your proposed Order before it is presented to
the Court, as it should reflect what our collective understanding of what the Judge's ruling was.
Feel free to email it to me at this address, as that will be the most expeditious way to get this
done. I look forward to seeing the Order in the next couple days.

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Cc: Garcia, Candace A.; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines
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Laura Barfield,

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16th, the State of Florida has 15 days to file a written response addressing the issue of
whether CMI is willing to release the source code to Dr. Myler and the exact terms under
which such an exchange would occur. So if you have never asked CMI about the terms
under which they would release the source code, the State of Florida is now required to do
so.

I suggest that you write CMI a
letter explaining what Ms. Garcia is required to file within the 15 day period. You should
ask CMI to review the request made by Dr. Myler which I have attached below. You must
find out as a preliminary matter if CMI is in possession of each piece of material requested
by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I
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information to Dr. Myler. If CMI is not in possession of the material requested by Dr.
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possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then t
hey better be willing to articulate their position in writing within the next 15
days. I will eagerly await your response.

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

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5. Software design documentation and change orders specific to Florida Intoxilyzer software.
6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

—
Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (fx)
409.790.1329 (cl)

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The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

7/25/2010

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Thursday, July 22, 2010 11:47 PM
To: lsammis@sammislawfirm.com
Cc: garcia_c@sao13th.com; Barfield, Laura
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

I am sincerely tempted to respond, but I can see there would be so very little to gain from the effort. Our conference call has been scheduled and CMI will respond to the State by the designated deadline.

I wish our interaction had been somewhat more productive. Thank you for your cooperation.



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From: Leslie Sammis
To: Edward G. Guedes
Cc: Barfield, Laura ; garcia_c@sao13th.com ; jsammis@sammislawfirm.com ; Pat WHITAKER
Sent: Thu Jul 22 21:52:36 2010
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Mr. Guedes,

What good would a conference call do if CMI is unwilling to response to Dr. Myler's request in writing in advance? Certainly, responding in writing would make the conference call more productive.

I'll ask you directly, do you know if CMI is in possession of the material contained in Dr. Myler's request?

According to it's website, CMI is a subsidiary company of MPD, Inc.

CMI's sister companies include MPD Components, Inc., MPH Industries, Inc., Lion Laboratories Limited (based in Barry, Wales, United Kingdom) and MPD PTE LTD (based in Singapore). According to the website for MPD, Inc., Lion Laboratories Limited manufactures a broad range of breath alcohol testing instruments that use fuel cell sensors (a technology pioneered by Lion) and infrared spectrometry. The website for MPD, Inc., also states that Lion and CMI represent the "largest organization in breath alcohol analysis in the world today, a field in which they are entirely specialized." Since Lion pioneered the technology, why wouldn't Lion keep the only unencrypted version of the software?

So don't you think it is possible that CMI only has an encrypted version of the source code? Laura Barfield is in possession of only an encrypted version of certain Florida specific software. In fact, Dr. Myler traveled to Tallahassee only to find out that the only thing available was an encrypted version of certain software. So, CMI and FDLE intentionally wasted Dr. Myler's time and Mr. Hyman's money. If CMI and FDLE didn't know that only an encrypted version of the software was available, then that must mean that CMI doesn't possess an unencrypted version (or will eventually claim not to possess it).

Why should anyone assume that CMI is even capable of releasing an unencrypted version of the source code? What if the unencrypted version of the source code is in the United Kingdom or Singapore?

In fact, your own website says that you represent a "multi-national corporate manufacturer" of breath testing equipment. Let's find out if an unencrypted version of the software is even located in this nation.

Before we all waste time waiting on a conference call, why don't you ask CMI to confirm in writing whether it is in possession of the material requested by Dr. Myler at it's facility in Kentucky? Then ask them if they are willing to release it. If so, ask them what terms and condition they would impose on the exchange. Put that in writing first, then any other issues can be discussed in the conference call.

Sincerely,

Leslie Sammis

7/25/2010

Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602

On Jul 22, 2010, at 12:19 PM, Edward G. Guedes wrote:

We are running into scheduling problems with Mr. Hyman and Dr. Myler in terms of holding our conference call. Pat Whitaker is continuing to try to schedule something. Ms. Sammis, since you are working with Dr. Myler as well, I'm open to suggestions how we make this conference call happen sooner rather than later.

Simply forwarding Dr. Myler's list to CMI, as you suggest in your e-mail, will not suffice. We attempted precisely that when Mr. Hyman provided us with a very similar (if not identical) list of Dr. Myler's "needs" and ended up having a whole host of questions from one side or the other that none of the lawyers could answer. When you write that "CMI, Inc. will either respond in writing to that inquiry within the time allotted or it will refuse to do so," that's not entirely accurate. CMI is not refusing to respond to the inquiry; we would *prefer* to respond to the inquiry meaningfully and in a manner that potentially resolves issues for everyone involved.

If, however, the August 2 deadline is "inflexible" and additional time cannot be obtained, and we are not able to schedule the necessary conference call before then, then CMI will respond to the best of its ability expressing its position as clearly as possible. CMI will continue, notwithstanding any premature response, to continue to try to reach an understanding with Dr. Myler and relevant defense counsel with respect to a forensic examination of the source code.

Regards,

Ed Guedes



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Sent: Monday, July 19, 2010 8:51 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Dear Mr. Guedes,

The Courts in Hillsborough County have proposed a more direct approach. The State of Florida has been ordered to make the following inquiry of CMI:

1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
4. Additionally, in the event CMI, Inc., is unwilling to release any or all of the source code materials listed in Defendant's Exhibit "B," the terms and conditions under which CMI, Inc., is willing to release any other information related to the source code and specifically, when that information will be.

CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquiry in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
813-250-0500

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Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

7/25/2010

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Monday, July 26, 2010 5:26 PM
To: Barfield, Laura; garcia_c@sao13th.com
Cc: Pat WHITAKER
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

I'm alerting you both to what to expect re CMI's response in Hillsborough County. Despite my best efforts (and Pat Whitaker can vouch for this), I received an e-mail today from Pat informing me that Stuart Hyman could not participate in the conference call which had been scheduled for the 28th at 12:30. Consequently, the call is being postponed until August 2 at 4:30 p.m. That will not leave CMI sufficient time to provide a meaningful response to the State regarding the examination of the source code. There is no way for me to process with CMI all the information obtained during the call so as to formulate a formal position regarding what CMI is willing to provide and under what conditions, and still meet the August 2 deadline.

I'm happy to prepare a preliminary response that addresses the efforts that are being undertaken, verifying that we actually have all the information that Dr. Myler is requesting, explain that there is actually an ongoing examination of the source code at CMI at this very moment, but that because of scheduling delays with Dr. Myler and Seminole County defense counsel, we have not been able to iron out the details before the court-imposed deadline expired.

It is up to the State if it wishes to obtain relief from the court with respect to the August 2 deadline. If so, please let me know and I will refrain from preparing the preliminary report. Otherwise, you'll get a preliminary report shortly before August 2 with a more substantive report as soon thereafter as possible.

Regards,

Ed



Edward G. Guedes
 Partner
 Board Certified in Appellate Practice
 Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
 2525 Ponce de Leon Blvd., Suite 700
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Sent: Thursday, July 22, 2010 9:53 PM
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Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,

What good would a conference call do if CMI is unwilling to response to Dr. Myler's request in writing in advance? Certainly, responding in writing would make the conference call more productive.

I'll ask you directly, do you know if CMI is in possession of the material contained in Dr. Myler's request?

According to it's website, CMI is a subsidiary company of MPD, Inc.

CMI's sister companies include MPD Components, Inc., MPH Industries, Inc., Lion Laboratories Limited (based in Barry, Wales, United Kingdom) and MPD PTE LTD (based in Singapore). According to the website for MPD, Inc., Lion Laboratories Limited manufactures a broad range of breath alcohol testing instruments that use fuel cell sensors (a technology pioneered by Lion) and infrared spectrometry. The website for MPD, Inc., also states that Lion and CMI represent the "largest organization in breath alcohol analysis in the world today, a field in which they are entirely specialized." Since Lion pioneered the technology, why wouldn't Lion keep the only unencrypted version of the software?

So don't you think it is possible that CMI only has an encrypted version of the source code? Laura Barfield is in possession of only an encrypted

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version of certain Florida specific software. In fact, Dr. Myler traveled to Tallahassee only to find out that the only thing available was an encrypted version of certain software. So, CMI and FDLE intentionally wasted Dr. Myler's time and Mr. Hyman's money. If CMI and FDLE didn't know that only an encrypted version of the software was available, then that must mean that CMI doesn't possess an unencrypted version (or will eventually claim not to possess it).

Why should anyone assume that CMI is even capable of releasing an unencrypted version of the source code? What if the unencrypted version of the source code is in the United Kingdom or Singapore?

In fact, your own website says that you represent a "multi-national corporate manufacturer" of breath testing equipment. Let's find out if an unencrypted version of the software is even located in this nation.

Before we all waste time waiting on a conference call, why don't you ask CMI to confirm in writing whether it is in possession of the material requested by Dr. Myler at it's facility in Kentucky? Then ask them if they are willing to release it. If so, ask them what terms and condition they would impose on the exchange. Put that in writing first, then any other issues can be discussed in the conference call.

Sincerely,

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602

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If, however, the August 2 deadline is "inflexible" and additional time cannot be obtained, and we are not able to schedule the necessary conference call before then, then CMI will respond to the best of its ability expressing its position as clearly as possible. CMI will continue, notwithstanding any premature response, to continue to try to reach an understanding with Dr. Myler and relevant defense counsel with respect to a forensic examination of the source code.

Regards,

Ed Guedes



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Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

7/27/2010

Dear Mr. Guedes,

The Courts in Hillsborough County have proposed a more direct approach. The State of Florida has been ordered to make the following inquiry of CMI:

1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
 2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
 3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
4. Additionally, in the event CMI, Inc., is unwilling to release any or all of the source code materials listed in Defendant's Exhibit "B," the terms and conditions under which CMI, Inc., is willing to release any other information related to the source code and specifically, what that information will be.

CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquiry in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
813-250-0500

On Jul 19, 2010, at 5:31 PM, Edward G. Guedes wrote:

We will endeavor to resolve these issues as quickly as possible. As Dr. Myler is aware, we have been engaged in ongoing discussions with ASA Pat Whitaker and attorney Stuart Hyman in Seminole County to try to resolve the mechanics of conducting the forensic examination in Owensboro, KY. The next step in the process was to be a telephone conference with Mr. Hyman, Dr. Myler, a CMI engineer and myself to discuss the particulars of the information needed. As Mr. Hyman and I quickly learned, the attorneys lack the expertise to meaningfully discuss what's needed without also having the experts participate in the discussion. We found ourselves asking questions of each other that neither of us knew the answer to. CMI has agreed to make its chief engineer available for a telephone conference to discuss with Dr. Myler directly what he perceives is necessary.

I e-mailed ASA Whitaker last week to find out when this call could take place, but I have not yet heard back from him. It's quite possible that he's trying to arrange the date and time for the call with Mr. Hyman. I've copied Pat on this e-mail so he knows this issue is arising also in Hillsborough County.

The response deadline apparently imposed on CMI in this case – without CMI's participation – is somewhat arbitrary, but we will endeavor to meet it in order to keep this process moving forward. I would much rather have a meaningful discussion with Dr. Myler and the CMI engineer on the line, after which the parameters of an inspection can be intelligently addressed, than submit an incomplete response by the deadline (assuming we can't meet the deadline, which I remain hopeful we can).

If defense counsel in *this* case would like to listen in on the conference call with Dr. Myler and the CMI engineer, I don't see that that would be a problem. The primary purpose of the call, though, is to have those individuals who have the technical expertise converse directly with each other about Dr. Myler's needs.

Regards,

Ed



Edward G. Guedes
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7/27/2010

From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]
Sent: Monday, July 19, 2010 11:45 AM
To: Edward G. Guedes
Cc: 'garcia_c@sao13th.com'; 'lsammis@sammislawfirm.com'; 'jsammis@sammislawfirm.com'
Subject: FW: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,
Please refer to the attached emails below.

Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Myler is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code viewing, also at CMI in Kentucky, being set up through Judge Herr's verbal order out of Seminole County.

Can you contact Ms. Garcia, or can Ms. Garcia contact you, in reference to the items listed below, as well as to begin facilitating the source code viewing by the defense? I believe it would be easier if the counsel for both sides worked directly with you in reference to this. I will remain available to assist, if or when necessary, as well.

Please let me know if this process can begin via contact with Ms. Garcia, representing the State, to answer the questions or needed information for the defense listed below.

Thanks,
Laura

From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: jsammis@sammislawfirm.com; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura – my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday, with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Deadline for the State of Florida to provide CMI's response to Sammis Law firm

August 9 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Sammis Law Firm's deadline to provide it's response to CMI's response (the five day response period will begin to run on the date that CMI's response is provided Sammis Law Firm....so if CMI's response is provided on July 23, the Sammis Law Firm's response will be due no later than July 30)

Leslie – My understanding was that you would be drafting an Order which reflects the Court's instructions on Friday. I would like to see a draft of your proposed Order before it is presented to the Court, as it should reflect what our collective understanding of what the Judge's ruling was. Feel free to email it to me at this address, as that will be the most expeditious way to get this done. I look forward to seeing the Order in the next couple days.

From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Sunday, July 18, 2010 12:34 PM
To: Barfield, Laura
Cc: Garcia, Candace A.; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Laura Barfield,

I do need additional information from you. As I understood the court's order from June 16th, the State of Florida has 15 days to file a written response addressing the issue of whether CMI is willing to release the source code to Dr. Myler and the exact terms under which such an exchange would occur. So if you have never asked CMI about the terms under which they would release the source code, the State of Florida is now required to do so.

I suggest that you write CMI a letter explaining what Ms. Garcia is required to file within the 15 day period. You should ask CMI to review the request made by Dr. Myler which I have attached below. You must find out as a preliminary matter if CMI is in possession of each piece of material requested by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I suggest that you ask CMI under what terms they would be willing to release such information to Dr. Myler. If CMI is not in possession of the material requested by Dr. Myler, then you have an obligation to find out which of the items listed below is not possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then they better be willing to articulate their position in writing

7/27/2010

within the next 15 days. I will eagerly await your response.

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

1. The source code versions for all software that has run in Florida Intoxilyzers to date to include unapproved versions that were used in Florida during pre-approval stages.
2. Source code compilation documentation as well as any data files required to produce compiled applications for the Intoxilyzer 8000 as it is used in Florida. This being the requisite compilation data to produce the files contained on distribution CD's as well as executable application files as intended to be downloaded for use in Florida Intoxilyzers.
3. Revision histories detailing changes made to the software for documentation and source code control purposes. Additionally, any source code control data files.
4. Any specialized applications developed for use with the compilation, distribution and evaluation, to include simulators, of the Florida Intoxilyzer programs. If these applications were produced in-house and have bearing on the analytical or reporting aspects of the machine, then the source code used to produce them will be required as well.
5. Software design documentation and change orders specific to Florida Intoxilyzer software.
6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

—
Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (fx)
409.790.1329 (ci)

NOTE: This e-mail is intended for the addressee(s) only and may contain privileged or confidential information. If you have received this e-mail in error, please send a notification immediately by e-mail.

Harley R. Myler, Ph.D., P.E. invokes privileges incorporated into Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This message should not be construed as a final opinion unless otherwise stated.

On Jul 17, 2010, at 10:57 AM, Barfield, Laura wrote:

The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

7/27/2010

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

7/27/2010

Barfield, Laura

From: Garcia, Candace A. [Garcia_C@SAO13th.com]
Sent: Tuesday, July 27, 2010 8:41 AM
To: 'Edward G. Guedes'; Barfield, Laura
Cc: Pat WHITAKER; Muratti, Renee
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Attachments: ~WRD000.jpg

Ed – I think your suggestion of preparing a preliminary report for the Court explaining CMI's efforts in coordinating a meeting is great and I would like to go ahead and to do that. I think these judges will appreciate the update and see that a sign in the right direction towards some sort of resolution. I suspect defense counsel will take issue with the adequacy of what we provide to the Court on that date, but frankly I don't think the judges will.

From: Edward G. Guedes [mailto:EGuedes@wsh-law.com]
Sent: Monday, July 26, 2010 5:26 PM
To: Barfield, Laura; Garcia, Candace A.
Cc: Pat WHITAKER
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 Image removed by sender.

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Sammis Law Firm, P.A.
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Regards,

Ed Guedes



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 2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
 3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
4. Additionally, in the event CMI, Inc., is unwilling to release any or all of the source code materials listed in Defendant's Exhibit "B," the terms and conditions under which CMI, Inc., is willing to release any other information related to the source code and specifically, what that information will be.

CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquiry in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

Leslie Sammis
Sammis Law Firm, P.A.
10015 N. Marion St.
Tampa, FL 33602
813-250-4500

On Jul 19, 2010, at 5:31 PM, Edward G. Guedes wrote:

We will endeavor to resolve these issues as quickly as possible. As Dr. Myler is aware, we have been engaged in ongoing discussions with ASA Pat Whitaker and attorney Stuart Hyman in Seminole County to try to resolve the mechanics of conducting the forensic examination in Owensboro, KY. The next step in the process was to be a telephone conference with Mr. Hyman, Dr. Myler, a CMI engineer and myself to discuss the particulars of the information needed. As Mr. Hyman and I quickly learned, the attorneys lack the expertise to meaningfully discuss what's needed without also having the experts participate in the discussion. We found ourselves asking questions of each other that neither of us knew the answer to. CMI has agreed to make its chief engineer available for a telephone conference to discuss with Dr. Myler directly what he perceives is necessary.

I e-mailed ASA Whitaker last week to find out when this call could take place, but I have not yet heard back from him. It's quite possible that he's trying to arrange the date and time for the call with Mr. Hyman. I've copied Pat on this e-mail so he knows this issue is arising also in Hillsborough County.

The response deadline apparently imposed on CMI in this case – without CMI's participation – is somewhat arbitrary, but we will endeavor to meet it in order to keep this process moving forward. I would much rather have a meaningful discussion with Dr. Myler and the CMI engineer on the line, after which the parameters of an inspection can be intelligently addressed, than submit an incomplete response by the deadline (assuming we can't meet the deadline, which I remain hopeful we can).

If defense counsel in *this* case would like to listen in on the conference call with Dr. Myler and the CMI engineer, I don't see that that would be a problem. The primary purpose of the call, though, is to have those individuals who have the technical expertise converse directly with each other about Dr. Myler's needs.

Regards,

Ed



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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323

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7/27/2010

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From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]
Sent: Monday, July 19, 2010 11:45 AM
To: Edward G. Guedes
Cc: 'garcia_c@sao13th.com'; 'lsammis@sammislawfirm.com'; 'jsammis@sammislawfirm.com'
Subject: FW: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,
Please refer to the attached emails below.

Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Myler is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code viewing, also at CMI in Kentucky, being set up through Judge Herr's verbal order out of Seminole County.

Can you contact Ms. Garcia, or can Ms. Garcia contact you, in reference to the items listed below, as well as to begin facilitating the source code viewing by the defense? I believe it would be easier if the counsel for both sides worked directly with you in reference to this. I will remain available to assist, if or when necessary, as well.

Please let me know if this process can begin via contact with Ms. Garcia, representing the State, to answer the questions or needed information for the defense listed below.

Thanks,
Laura

From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: jsammis@sammislawfirm.com; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura – my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday, with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Deadline for the State of Florida to provide CMI's response to Sammis Law firm

August 9 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Sammis Law Firm's deadline to provide it's response to CMI's response (the five day response period will begin to run on the date that CMI's response is provided Sammis Law Firm....so if CMI's response is provided on July 23, the Sammis Law Firm's response will be due no later than July 30)

Leslie – My understanding was that you would be drafting an Order which reflects the Court's instructions on Friday. I would like to see a draft of your proposed Order before it is presented to the Court, as it should reflect what our collective understanding of what the Judge's ruling was. Feel free to email it to me at this address, as that will be the most expeditious way to get this done. I look forward to seeing the Order in the next couple days.

From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Sunday, July 18, 2010 12:34 PM
To: Barfield, Laura
Cc: Garcia, Candace A.; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Laura Barfield,

I do need additional information from you. As I understood the court's order from June 16th, the State of Florida has 15 days to file a written response addressing the issue of whether CMI is willing to release the source code to Dr. Myler and the exact terms under which such an exchange would occur. So if you have never asked CMI about the terms under which they would release the source code, the State of Florida is now required to do so.

7/27/2010

I suggest that you write CMI a letter explaining what Ms. Garcia is required to file within the 15 day period. You should ask CMI to review the request made by Dr. Myler which I have attached below. You must find out as a preliminary matter if CMI is in possession of each piece of material requested by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I suggest that you ask CMI under what terms they would be willing to release such information to Dr. Myler. If CMI is not in possession of the material requested by Dr. Myler, then you have an obligation to find out which of the items listed below is not possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then they better be willing to articulate their position in writing within the next 15 days. I will eagerly await your response.

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

1. The source code versions for all software that has run in Florida Intoxilyzers to date to include unapproved versions that were used in Florida during pre-approval stages.
2. Source code compilation documentation as well as any data files required to produce compiled applications for the Intoxilyzer 8000 as it is used in Florida. This being the requisite compilation data to produce the files contained on distribution CD's as well as executable application files as intended to be downloaded for use in Florida Intoxilyzers.
3. Revision histories detailing changes made to the software for documentation and source code control purposes. Additionally, any source code control data files.
4. Any specialized applications developed for use with the compilation, distribution and evaluation, to include simulators, of the Florida Intoxilyzer programs. If these applications were produced in-house and have bearing on the analytical or reporting aspects of the machine, then the source code used to produce them will be required as well.
5. Software design documentation and change orders specific to Florida Intoxilyzer software.
6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

--
Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (tx)
409.790.1329 (cl)

NOTE: This e-mail is intended for the addressee(s) only and may contain privileged or confidential information. If you have received this e-mail in error, please send a notification immediately by e-mail.

Harley R. Myler, Ph.D., P.E. invokes privileges incorporated into Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This message should not be construed as a final opinion unless otherwise stated.

On Jul 17, 2010, at 10:57 AM, Barfield, Laura wrote:

The contact information for the attorney that represents CMI in Florida is as follows:

7/27/2010

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

7/27/2010

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Tuesday, July 27, 2010 12:32 PM
To: Garcia, Candace A.; Barfield, Laura
Cc: Pat WHITAKER; Muratti, Renee
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Attachments: image002.jpg

I anticipate that the response will be addressed to you, Candace. You may then distribute to the appropriate parties.

Regards,

Ed



**WEISS
 SEROTA
 HELFMAN
 PASTORIZA
 COLE &
 BONISKE, P.L.**

Edward G. Guedes
 Partner
 Board Certified in Appellate Practice
 Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
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From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Tuesday, July 27, 2010 8:41 AM
To: Edward G. Guedes; Barfield, Laura
Cc: Pat WHITAKER; Muratti, Renee
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Ed – I think your suggestion of preparing a preliminary report for the Court explaining CMI's efforts in coordinating a meeting is great and I would like to go ahead and to do that. I think these judges will appreciate the update and see that a sign in the right direction towards some sort of resolution. I suspect defense counsel will take issue with the adequacy of what we provide to the Court on that date, but frankly I don't think the judges will.

From: Edward G. Guedes [mailto:EGuedes@wsh-law.com]
Sent: Monday, July 26, 2010 5:26 PM
To: Barfield, Laura; Garcia, Candace A.
Cc: Pat WHITAKER
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

I'm alerting you both to what to expect re CMI's response in Hillsborough County. Despite my best efforts (and Pat Whitaker can vouch for this), I received an e-mail today from Pat informing me that Stuart Hyman could not participate in the conference call which had been scheduled for the 28th at 12:30. Consequently, the call is being postponed until August 2 at 4:30 p.m. That will not leave CMI sufficient time to provide a meaningful response to the State regarding the examination of the source code. There is no way for me to process with CMI all the information obtained during the call so as to formulate a formal position regarding what CMI is willing to provide and under what conditions, and still meet the August 2 deadline.

I'm happy to prepare a preliminary response that addresses the efforts that are being undertaken, verifying that we actually have all the information that Dr. Myler is requesting, explain that there is actually an ongoing examination of the source code at CMI at this very moment, but that because of scheduling delays with Dr. Myler and Seminole County defense counsel, we have not been able to iron out the details before the court-imposed deadline expired.

It is up to the State if it wishes to obtain relief from the court with respect to the August 2 deadline. If so, please let me know and I will refrain from preparing the preliminary report. Otherwise, you'll get a preliminary report shortly before August 2 with a more substantive report as soon thereafter as possible.

Regards,

Ed

7/27/2010

 Image removed by sender.

Edward G. Guedes
Partner
Board Certified in Appellate Practice
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2525 Ponce de Leon Blvd., Suite 700
Coral Gables, FL 33134
www.wsh-law.com
Tel: (305) 854-0800
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From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Thursday, July 22, 2010 9:53 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,

What good would a conference call do if CMI is unwilling to response to Dr. Myler's request in writing in advance? Certainly, responding in writing would make the conference call more productive.

I'll ask you directly, do you know if CMI is in possession of the material contained in Dr. Myler's request?

According to it's website, CMI is a subsidiary company of MPD, Inc.

CMI's sister companies include MPD Components, Inc., MPH Industries, Inc., Lion Laboratories Limited (based in Barry, Wales, United Kingdom) and MPD PTE LTD (based in Singapore). According to the website for MPD, Inc., Lion Laboratories Limited manufactures a broad range of breath alcohol testing instruments that use fuel cell sensors (a technology pioneered by Lion) and infrared spectrometry. The website for MPD, Inc., also states that Lion and CMI represent the "largest organization in breath alcohol analysis in the world today, a field in which they are entirely specialized." Since Lion pioneered the technology, why wouldn't Lion keep the only unencrypted version of the software?

So don't you think it is possible that CMI only has an encrypted version of the source code? Laura Barfield is in possession of only an encrypted version of certain Florida specific software. In fact, Dr. Myler traveled to Tallahassee only to find out that the only thing available was an encrypted version of certain software. So, CMI and FDLE intentionally wasted Dr. Myler's time and Mr. Hyman's money. If CMI and FDLE didn't know that only an encrypted version of the software was available, then that must mean that CMI doesn't possess an unencrypted version (or will eventually claim not to possess it).

Why should anyone assume that CMI is even capable of releasing an unencrypted version of the source code? What if the unencrypted version of the source code is in the United Kingdom or Singapore?

In fact, your own website says that you represent a "multi-national corporate manufacturer" of breath testing equipment. Let's find out if an unencrypted version of the software is even located in this nation.

Before we all waste time waiting on a conference call, why don't you ask CMI to confirm in writing whether it is in possession of the material requested by Dr. Myler at it's facility in Kentucky? Then ask them if they are willing to release it. If so, ask them what terms and condition they would impose on the exchange. Put that in writing first, then any other issues can be discussed in the conference call.

Sincerely,

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602

On Jul 22, 2010, at 12:19 PM, Edward G. Guedes wrote:

We are running into scheduling problems with Mr. Hyman and Dr. Myler in terms of holding our conference call. Pat Whitaker is continuing to try to schedule something. Ms. Sammis, since you are working with Dr. Myler as well, I'm open to suggestions how we make this conference call happen sooner rather than later.

7/27/2010

Simply forwarding Dr. Myler's list to CMI, as you suggest in your e-mail, will not suffice. We attempted precisely that when Mr. Hyman provided us with a very similar (if not identical) list of Dr. Myler's "needs" and ended up having a whole host of questions from one side or the other that none of the lawyers could answer. When you write that "CMI, Inc. will either respond in writing to that inquiry within the time allotted or it will refuse to do so," that's not entirely accurate. CMI is not refusing to respond to the inquiry; we would *prefer* to respond to the inquiry meaningfully and in a manner that potentially resolves issues for everyone involved.

If, however, the August 2 deadline is "inflexible" and additional time cannot be obtained, and we are not able to schedule the necessary conference call before then, then CMI will respond to the best of its ability expressing its position as clearly as possible. CMI will continue, notwithstanding any premature response, to continue to try to reach an understanding with Dr. Myler and relevant defense counsel with respect to a forensic examination of the source code.

Regards,

Ed Guedes



Edward G. Guedes
 Partner
 Board Certified in Appellate Practice
 Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
 2525 Ponce de Leon Blvd., Suite 700
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From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Monday, July 19, 2010 8:51 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Dear Mr. Guedes,

The Courts in Hillsborough County have proposed a more direct approach. The State of Florida has been ordered to make the following inquiry of CMI:

1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
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CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquiry in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

Leslie Sammis
 Sammis Law Firm, P.A.
 1005 N. Marion St
 Tampa, FL 33602
 813-250-0500

On Jul 19, 2010, at 5:31 PM, Edward G. Guedes wrote:

We will endeavor to resolve these issues as quickly as possible. As Dr. Myler is aware, we have been engaged in ongoing discussions with ASA Pat Whitaker and

7/27/2010

attorney Stuart Hyman in Seminole County to try to resolve the mechanics of conducting the forensic examination in Owensboro, KY. The next step in the process was to be a telephone conference with Mr. Hyman, Dr. Myler, a CMI engineer and myself to discuss the particulars of the information needed. As Mr. Hyman and I quickly learned, the attorneys lack the expertise to meaningfully discuss what's needed without also having the experts participate in the discussion. We found ourselves asking questions of each other that neither of us knew the answer to. CMI has agreed to make its chief engineer available for a telephone conference to discuss with Dr. Myler directly what he perceives is necessary.

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If defense counsel in *this* case would like to listen in on the conference call with Dr. Myler and the CMI engineer, I don't see that that would be a problem. The primary purpose of the call, though, is to have those individuals who have the technical expertise converse directly with each other about Dr. Myler's needs.

Regards,

Ed



**WEISS
SEROTA
HELFMAN
PASTORIZA
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From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]
Sent: Monday, July 19, 2010 11:45 AM
To: Edward G. Guedes
Cc: 'garcia_c@sao13th.com'; 'jsammis@sammlawfirm.com'; 'jsammis@sammlawfirm.com'
Subject: FW: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,

Please refer to the attached emails below.

Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Mylar is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code viewing, also at CMI in Kentucky, being set up through Judge Herr's verbal order out of Seminole County.

Can you contact Ms. Garcia, or can Ms. Garcia contact you, in reference to the items listed below, as well as to begin facilitating the source code viewing by the defense? I believe it would be easier if the counsel for both sides worked directly with you in reference to this. I will remain available to assist, if or when necessary, as well.

Please let me know if this process can begin via contact with Ms. Garcia, representing the State, to answer the questions or needed information for the defense listed below.

Thanks,

7/27/2010

Laura

From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: jsammis@sammislawfirm.com; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura – my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday, with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Deadline for the State of Florida to provide CMI's response to Sammis Law firm

August 9 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Sammis Law Firm's deadline to provide it's response to CMI's response (the five day response period will begin to run on the date that CMI's response is provided Sammis Law Firm.....so if CMI's response is provided on July 23, the Sammis Law Firm's response will be due no later than July 30)

Leslie – My understanding was that you would be drafting an Order which reflects the Court's instructions on Friday. I would like to see a draft of your proposed Order before it is presented to the Court, as it should reflect what our collective understanding of what the Judge's ruling was. Feel free to email it to me at this address, as that will be the most expeditious way to get this done. I look forward to seeing the Order in the next couple days.

From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Sunday, July 18, 2010 12:34 PM
To: Barfield, Laura
Cc: Garcia, Candace A.; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Laura Barfield,

I do need additional information from you. As I understood the court's order from June 16th, the State of Florida has 15 days to file a written response addressing the issue of whether CMI is willing to release the source code to Dr. Myler and the exact terms under which such an exchange would occur. So if you have never asked CMI about the terms under which they would release the source code, the State of Florida is now required to do so.

I suggest that you write CMI a letter explaining what Ms. Garcia is required to file within the 15 day period. You should ask CMI to review the request made by Dr. Myler which I have attached below. You must find out as a preliminary matter if CMI is in possession of each piece of material requested by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I suggest that you ask CMI under what terms they would be willing to release such information to Dr. Myler. If CMI is not in possession of the material requested by Dr. Myler, then you have an obligation to find out which of the items listed below is not possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then they better be willing to articulate their position in writing within the next 15 days. I will eagerly await your response.

Leslie Sammis
 Sammis Law Firm, P.A.
 1005 N. Marion St.
 Tampa, FL 33602
 lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

1. The source code versions for all software that has run in Florida Intoxilyzers to date to include unapproved versions that were used in Florida during pre-approval stages.
2. Source code compilation documentation as well as any data files required to produced compiled applications for the Intoxilyzer 8000 as it is used in Florida. This being the requisite compilation data to produce the files contained on distribution CD's as well as executable application files as intended to be downloaded for use in Florida Intoxilyzers.
3. Revision histories detailing changes made to the software for documentation and source code control purposes. Additionally, any source code control data files.
4. Any specialized applications developed for use with the compilation, distribution and evaluation, to include simulators, of the Florida Intoxilyzer programs. If these applications were produced in-house and have bearing on the analytical or reporting aspects of the machine, then the source code used to produce them will be required as well.

7/27/2010

5. Software design documentation and change orders specific to Florida Intoxilyzer software.

6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

--
Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (fx)
409.790.1329 (cl)

NOTE: This e-mail is intended for the addressee(s) only and may contain privileged or confidential information. If you have received this e-mail in error, please send a notification immediately by e-mail.

Harley R. Myler, Ph.D., P.E. invokes privileges incorporated into Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This message should not be construed as a final opinion unless otherwise stated.

On Jul 17, 2010, at 10:57 AM, Barfield, Laura wrote:

The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

7/27/2010

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Monday, August 02, 2010 12:42 PM
To: Garcia, Candace A.; Barfield, Laura
Subject: CMI's Preliminary Response Re Source Code Examination
Importance: High
Attachments: DadeRearCopier@wsh-law.com_20100802_120548.pdf

Dear Ms. Garcia and Ms. Barfield,

Attached is CMI's preliminary response regarding the examination of the source code for the I-8000. The letter should be self-explanatory, but should you have any questions, please don't hesitate to contact me. The original will follow by mail.

CMI will submit a supplemental response once we have had the chance to complete our conference call with Dr. Myler.

Regards,

Ed



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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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8/4/2010

**WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.**

ATTORNEYS AT LAW

A PROFESSIONAL LIMITED LIABILITY COMPANY
INCLUDING PROFESSIONAL ASSOCIATIONS

MIAMI-DADE OFFICE

2525 PONCE DE LEON BOULEVARD

SUITE 700

CORAL GABLES, FLORIDA 33134

TELEPHONE 305-854-0800

FACSIMILE 305-854-2323

WWW.WSH-LAW.COM

BROWARD OFFICE

200 EAST BROWARD BOULEVARD • SUITE 1900

FORT LAUDERDALE, FLORIDA 33301

TELEPHONE 954-763-4242 • FACSIMILE 954-764-7770

*OF COUNSEL

BROOKE P. DOLARA
RAQUEL ELEJABARRIETA
CHAD S. FRIEDMAN
OLIVER GILBERT*
MACADAM J. GLINN
R. BRIAN JOHNSON
JOHN J. KENDRICK III
HARLENE SILVERN KENNEDY*
KAREN LIEBERMAN*
JOHANNA M. LUNDGREN
KATHRYN M. MEHAFFEY
MATTHEW PEARL
JOHN J. QUICK
AMY J. SANTIAGO
DANIEL A. SEIGEL
GAIL D. SEROTA*
JONATHAN C. SHAMRES
ESTRELLITA S. SIBILA
ALISON F. SMITH
ANTHONY C. SOROKA
EDUARDO M. SOTO
JOANNA G. THOMSON
MICHELLE D. VOS
PETER D. WALDMAN*
JAMES E. WHITE
DEREK R. YOUNG

MITCHELL BIERMAN, P.A.
NINA L. BONISKE, P.A.
MITCHELL J. BURNSTEIN, P.A.
JAMIE ALAN COLE, P.A.
STEPHEN J. HELFMAN, P.A.
GILBERTO PASTORIZA, P.A.
MICHAEL S. POPOK, P.A.
JOSEPH H. SEROTA, P.A.
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ALAN L. GABRIEL
DOUGLAS R. GONZALES
EDWARD G. GUEDES
JONATHAN Z. KURRY
MATTHEW H. MANDEL
ALEXANDER L. PALENZUELA-MAURI
ANTHONY L. RECIO
SCOTT A. ROBIN
BRETT J. SCHNEIDER
CLIFFORD A. SCHULMAN
LAURA K. WENDELL

LORI ADELSON*
LILLIAN M. ARANGO
CARLA M. BARROW*

August 2, 2010

VIA E-MAIL AND U.S. MAIL

Candace A. Garcia, Esq.
Assistant State Attorney
Office of the State Attorney
419 North Pierce Street
Tampa, FL 33602

Re: Examination of Source Code in Hillsborough County DUI Cases

Dear Ms. Garcia:

The undersigned is Florida counsel for CMI, Inc. ("CMI"), the manufacturer of the Intoxilyzer 8000 breath-alcohol testing instrument currently in use by law enforcement in the State of Florida. It was brought to our attention on July 19, 2010, by Ms. Laura Barfield, that certain judges in Hillsborough County had inquired as to CMI's position regarding a possible forensic examination of the electronic version of the source code and software currently in use for the Intoxilyzer 8000 (hereafter, the "Source Code"). Ms. Barfield's notification indicated that the State was obliged to provide CMI's response to defense counsel no later than August 2, 2010. For reasons that are more fully set forth below, this letter constitutes CMI's *preliminary* response to this inquiry. CMI anticipates that a further, more comprehensive response will be forthcoming shortly after the August 2, 2010 deadline.

RECEIVED

AUG 02 2010

**FDLE
Alcohol Testing Program**

A. Background.

In connection with litigation arising in Minnesota and Montana, CMI made arrangements, specifically approved by the courts of both those states, to have defense counsel and their experts visit CMI's headquarters in Owensboro, Kentucky, and conduct a thorough forensic examination of the Intoxilyzer source code (the 5000 model in the case of Minnesota; the 8000 model for Montana). The forensic examination in the Minnesota litigation remains ongoing at CMI's headquarters. CMI has dedicated a portion of a separate air-conditioned building for the examination. In addition to a dedicated computer that contains the relevant source code and all necessary decryption software, defense counsel and their experts have been provided with, among other things, an Intoxilyzer 5000 unit for testing, along with desks, testing supplies and a separate private conference room. An independent expert, Mario Santana, examined the sufficiency of the source examination process and submitted an affidavit in the Minnesota proceedings attesting to its sufficiency. A copy of the Mr. Santana's affidavit is attached as Exhibit "A." As it happens, Dr. Harley Myler (who is also the defense expert in the Hillsborough County cases) signed the requisite non-disclosure agreement to participate in the ongoing source code examination at CMI.¹

In part because of the court-approved Minnesota/Montana source code examination model, CMI has for several months now been working with Seminole County Assistant State Attorney Pat Whitaker, defense attorney, Stuart Hyman, and his expert, Dr. Myler, to reach an understanding as to the parameters of a comprehensive forensic examination of the Source Code (this time for the Intoxilyzer 8000) at CMI's headquarters. This effort commenced in response to an inquiry from judges in pending DUI cases in Seminole County. On May 14, 2010, CMI agreed in writing to such a forensic examination of the Source Code. A copy of CMI's correspondence is attached as Exhibit "B." Several days later, CMI detailed the items it would provide to Dr. Myler in connection with the Source Code examination and the conditions of the examination, including a sample non-disclosure agreement and protective order (comparable to what had been approved in Minnesota and Montana). See Exhibit "C."

In response to CMI's correspondence, Dr. Myler, through counsel, communicated a series of questions/requests pertaining to the examination.² On June 21, 2010, undersigned counsel conferred at length with Mr. Hyman and ASA Whitaker to attempt to address Dr. Myler's inquiries. It became apparent, however, that the attorneys on the call lacked the requisite expertise to answer the questions they were asking of each other with respect to Dr. Myler's requests. It was determined, at that time, to schedule another

¹ Dr. Myler has also testified in *State v. Bowles* (Volusia County) that he is willing to abide by a non-disclosure agreement, which he acknowledges is a standard procedure when reviewing computer software. He has also acknowledged that the Source Code is the property of CMI.

² The requests submitted by Dr. Myler were substantially similar to the ones he has presented in connection with the Hillsborough County cases.

conference call, this time with the participation of Dr. Myler and a CMI engineer so that they could communicate directly with each other with respect to the technical issues being raised.

B. CMI's Efforts in the Hillsborough County Cases.

When CMI learned of the State's obligation to present CMI's position regarding a possible examination of the Source Code, CMI reached out to defense counsel in Hillsborough County, Leslie Sammis, and invited her to participate in the upcoming conference call with Dr. Myler. She declined, stating, in part, "CMI, Inc. will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler." A copy of the e-mail correspondence trail commencing July 17 and running through July 22, 2010, is attached as Exhibit "D."

Three days later, undersigned counsel again communicated with Ms. Sammis informing her that ASA Whitaker, Mr. Hyman and Dr. Myler were experiencing difficulties in coordinating the previously agreed upon conference call to discuss the parameters of the Source Code examination. Again, CMI invited Ms. Sammis to make any suggestions that might expedite the conference call and allow for a timely response from CMI before the August 2, 2010 deadline. Ms. Sammis responded on July 22 stating, among other things, "What good would a conference call do if CMI is unwilling to response [sic] to Dr. Myler's request in writing in advance?"³ See Exhibit "D." Ms. Sammis then proceeded to interrogate undersigned counsel regarding what she had apparently "learned" from CMI's web site, all of which was based on a series of mistaken assumptions and rank speculation. *Id.*

Despite Ms. Sammis' position, ASA Whitaker, Mr. Hyman, Dr. Myler and undersigned counsel went ahead and scheduled a conference call for July 28, 2010. Unfortunately, on July 26, 2010, ASA Whitaker wrote to undersigned counsel and informed him that Mr. Hyman had indicated he would be unable to participate in the July 28, 2010 conference call and offered the alternate date of August 2, 2010. A copy of ASA Whitaker's correspondence is attached as Exhibit "E."

As a result of the unexpected change in schedule, it will not be possible for CMI to conclude its conference call with Dr. Myler and respond to the court in Hillsborough County by the August 2, 2010 deadline. Nonetheless, it should be apparent from this submission that Ms. Barfield's testimony was accurate regarding CMI's expressed

³ Undersigned counsel had explained to Ms. Sammis in earlier e-mail on July 19, 2010, that a response in writing was not possible before the conference call because the attorneys had too many questions to which they did not know the answers. In fact, the very purpose of the conference call was to address those questions and allow those with the necessary technical expertise to fully understand what was being sought. See Exhibit "D."

Candace A. Garcia, Esq.
August 2, 2010
Page 4 of 4

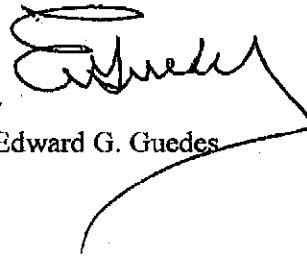
willingness to arrange for an examination of the Source Code. CMI has *already* explicitly offered, in writing, to make the Source Code available in Kentucky, in its native electronic format, along with any and all necessary supporting software that would make the examination meaningful. Not only has CMI made such an offer, but such an examination is presently underway at CMI's headquarters, albeit with respect to the Intoxilyzer 5000 source code.

CMI remains confident that it will be able to reach an understanding with Dr. Myler and Mr. Hyman with respect to a thorough forensic examination of the Source Code, subject to certain safeguards designed to protect CMI's proprietary interests in the Source Code and the State's interests in the security of the testing program. As soon as practicable after the August 2, 2010 conference call with Dr. Myler, CMI will submit to the State a supplemental report detailing what additional information, if any, will be made available that is responsive to Dr. Myler's requests and under what conditions.

CMI has authorized undersigned counsel to continue to work with the State and with the courts of Hillsborough County, even subsequent to the supplemental report, in an effort to determine if it will be possible to coordinate a forensic examination of the Source Code that is mutually agreeable to all parties involved.

Should you have any questions regarding this preliminary report, please do not hesitate to contact me.

Very truly yours,



Edward G. Guedes

1782.003

Encl.

cc: Ms. Laura Barfield (w/encl.)
Nola Wright, Esq. (w/encl.)
Pat Whitaker, Esq. (w/encl.)

STATE OF VIRGINIA)
)
COUNTY OF FAIRFAX) SS.

MARIO D. SANTANA, CISSP, CISA, being duly sworn, hereby swears under penalty of perjury that:

1. I am employed by Terremark, Inc. ("Terremark") as a Director of Secure Information Services, and previously by SteelCloud, Inc. as a Senior Security Consultant.
2. I graduated from Colorado Technical University in 2006 and received additional training in computer programming, systems, networks and related areas from the SANS Institute.
3. I am a Certified Information Systems Security Professional ("CISSP") and a Certified Information Systems Auditor ("CISA").
4. I have worked extensively in the field of computer programming and system development. I have also guest lectured on these subjects at Florida International University. I have written several whitepapers on software and software development. My Curriculum Vitae is attached as Appendix A.
5. Terremark was engaged to assist CMI, Inc. ("CMI") by providing a programming and systems expert to review certain source code (the "Code") developed and owned by CMI used in a particular model of CMI's Intoxilyzer device and to render an independent opinion as to whether a qualified programmer could understand from reviewing the Code the Code's logic and how the Code operates. In addition, Terremark was asked to evaluate the mechanisms by which the Code is controlled as it is passed from the development of the Code through installation into the Intoxilyzer device.
6. I was assigned to perform the required analysis of the Code and how it was controlled.
7. On Thursday, October 16, 2008, I spent a day at CMI's offices in Owensboro, KY to carry out this assignment.
8. I was presented with a printed book containing 1,116 pages of source code (the "Code Book") and an electronic document of identical content in PDF (Portable Document File)



Case 0:08-cv-00603-DWF-AJB Document 50 Filed 10/28/2008 Page 2 of 7
format (the 'Code PDF.') I determined that the Code Book and the Code PDF were identical by comparing the number of pages and by visually inspecting the contents in both the book and the PDF for a series of randomly-chosen pages, specifically 1-5, 63, 128, 307, 357, 630, 643, 735, 908, and 1,114-1,116.

9. There are two distinct parts to the Code. The first part is written in Z80 assembly language and pertains to the function of the general-purpose Z80 computer chip, which in general terms controls the user interface and related functions of the Intoxilyzer device. The second part is written in the 'C' programming language and pertains to the 8051 chip, which in general terms controls the sensors in the Intoxilyzer device. These two parts are designed to work together as a single system.
10. Hard copy or printed pages, such as the Code Book I reviewed, can be tracked and managed more easily for security purposes than electronic copies. Of popular electronic formats, PDF is one of the easiest to control, and a single electronic document file, such as the PDF I reviewed, is easier to control than multiple electronic document files. Nevertheless, extreme care must be taken with any electronic format in order to protect its contents from being inadvertently copied and distributed. Once an electronic file is written to disk, it's difficult to erase completely without specialized tools and techniques. Unlimited identical copies may be quickly and conveniently made of an electronic document without any loss of fidelity, and without any audit trail of such copies. Where photocopying of more than 1,100 pages of paper would require significant time, and would be greater than the size of 2 reams of paper, PDF files are simply computer data and can be copied very quickly, stored on any of a number of storage devices (hard drives, flash memory devices, CDs, DVDs, etc.) Because of these and other reasons, it is extremely difficult - and often impossible - to account for every reasonably possible copy made of an electronic document while it was not under the strictest access controls.
11. The Code was inspected manually because, while there are automated tools and techniques to gather statistical information about computer source code, there is no automated method of analyzing source code to verify its function. Manual inspection is, therefore, the only reliable way of reviewing source code to understand exactly what it does and how it does it.

12. Inspection of computer source code requires a person with expertise in the particular computer languages used (here, Z80 assembler and "C".)
13. While I have the requisite expertise in Z80 assembler and "C", I did not have any prior exposure in regard to CMP's particular Source Code or explanation of the Source Code provided by the client.
14. I began by sampling random sections of the code, and then selected four functional components to analyze in more depth. The functional components I analyzed are those that implemented the calibration and diagnostic functions, the subsystem interface between the Z80 and the 8051 chips, and the main logic loops. In all cases, the source code for these components was easy to find, read and understand.
15. The computer source code I analyzed is easily readable and understood by a programmer experienced in both assembly-language programming for the Z80 computer chip and the C programming language. The following characteristics of the code lead me to this conclusion:
 - 15.1. The Courier font in which the book and the PDF are typeset is clearly legible.
 - 15.2. Comments, which are not computer instructions but rather meant for humans, are used liberally in the code to document its function.
 - 15.3. Program logic is divided into blocks, which are clearly delineated with comments.
 - 15.4. Program logic is hierarchical, with blocks of program logic nested within each other. Nesting is clearly and consistently indicated throughout the code in the usual manner for showing such nesting, which is four spaces of indentation for each level of nesting. This helps make the code easy to read for humans.
 - 15.5. High-level program architecture is very data-driven, meaning that the organization of data in the programs is an important part of how the program is designed. These data structures are defined and heavily commented early in the source code files, providing valuable insight into the program's design.
 - 15.6. Labels are declared and commented early, and used throughout the code in place of numerical constants. For example, memory addresses are referenced with labels, rather than with raw numerical memory addresses. This dramatically improves readability.

15.7. The overall software architecture is based on a straightforward monolithic design.

There are none of the confusing complexities of distributed, multi-threaded or re-entrant code, because these complex features are not used by the software. This makes for source code that flows easily from one task to the next in simple, logical steps.

15.8. Where program logic begins to display any complexity, it is divided into a series of simple steps and heavily commented.

15.9. Wherever there is any subtlety of logic, these are identified and explained in comments. This applies even for standard language idioms such as control loops, which are prone to so-called 'off-by-one' errors, and which are not usually commented in other source code.

15.10. Being that the main constraint of the embedded platform on which this code runs is storage space for program instructions and data, various optimization techniques are used to reduce the size of the compiled program that must be copied to and fit in the limited memory of the hardware platform. These optimizations include compiler pragmas, and the use of relative rather than absolute jump instructions. However, none of these optimizations complicate the reading or understanding of the code by a human.

16. In order to develop an opinion about whether the Code I reviewed is actually the code that shipped on a particular device, I toured the parts of the plant where the Intoxilyzer devices are developed, tested and built, and reviewed the processes used in each step. The steps to create a complete system from hardware and source code are simple and robust. Multiple checks and balances are built into the process to help eliminate errors in the manufacturing process. The steps were explained and, where possible, demonstrated for me:

16.1. Software engineering labels a completed code revision with a unique name.

16.2. Each code revision incorporates a mathematically unique checksum of its constituent code. This checksum is recalculated and verified at various stages of the development and manufacturing process to ensure the integrity of the software as it moves from step to step in the process.

16.3. This code revision is used by a quality control engineer to build a complete device, and that device is thoroughly tested for proper function, using a detailed testing plan that I was informed can take days to execute.

16.4. If testing is successful, the code is released to the manufacturing process, where it is used in the production of new units, and in the production of chipsets used by customers to upgrade older equipment to use newer code releases.

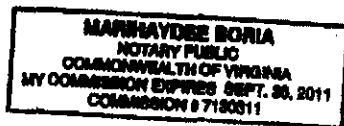
16.5. Manufacturing maintains a record of each device, including the code revision that was shipped inside it.

17. These process controls are designed to ensure that the code labeled for release on a certain device is in fact the code that ships with that device, and they do so with a high level of assurance.


Mario D. Santana

SWORN TO before me this 28 day
of October, 2008.


Notary Public



Appendix A: Curriculum Vitae

Mario D. Santana, CISSP, CISA

Mario D. Santana joined the Secure Information Services group at Terremark Worldwide, Inc. in January 2006. He consults with Terremark clients on topics of security, technology, and risk management, and develops related consultancy product offerings. Formerly, Mr. Santana founded an identity management technology company and consulted for SteelCloud, Inc.

Mr. Santana has worked with numerous Fortune 1000 organizations worldwide, including financial, health-care and educational institutions, airport security and airlines, retail conglomerates, and technology and legal firms. He has led and managed engagements around security and risk management concerns such as corporate governance, forensics and electronic discovery, intellectual property fraud, insider incidents, and penetration testing and auditing networks, systems and applications.

Recent Professional Experience

- **Mario led the incident response team when a national financial institution was the victim of system compromise and subsequent internet identity theft fraud. The forensic evidence led to an investigation that spanned three continents and numerous intermediaries, concluding in containment, system recovery, root cause determination, and eradication of the breach.**
- **During a comprehensive insider threat assessment for a major provider of airport security, Mario found a fundamental issue of corporate governance and inter-departmental cooperation, after a full forensic investigation of suspected bad actors verified good faith and an excellent work ethic.**
- **A large car rental company was suffering system outages and severe monetary losses during an extended denial of service attack. Using a variety of techniques, especially digital forensics and reverse-engineering, Mario was able to pinpoint the root cause of the**

Education and Certifications

- Colorado Technical University, B.S. Business Administration
- Certified Information Systems Security Professional (CISSP)
- Certified Information Systems Auditor (CISA)

Professional Affiliations

- Member, International Information Systems Security Certification Consortium (ISC²)
- Member, Information Systems Audit and Control Association (ISACA)
- Member, International Systems Security Association (ISSA)
- Member, SysAdmin Audit and Network Security (SANS) Institute and board of directors
- Member, FBI InfraGard, Dallas Chapter

**WEISS SEROTA HELFMAN
PASTORIZA COLE & BONISKE, P.L.**

ATTORNEYS AT LAW

A PROFESSIONAL LIMITED LIABILITY COMPANY
INCLUDING PROFESSIONAL ASSOCIATIONS

MIAMI-DADE OFFICE

2525 PONCE DE LEON BOULEVARD
SUITE 700
CORAL GABLES, FLORIDA 33134

TELEPHONE 305-854-0800

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WWW.WSH-LAW.COM

BROWARD OFFICE

200 EAST BROWARD BOULEVARD • SUITE 1900
FORT LAUDERDALE, FLORIDA 33301
TELEPHONE 954-763-4242 • FACSIMILE 954-764-7770

*OF COUNSEL

MITCHELL BIERMAN, P.A.
NINA L. BONISKE, P.A.
MITCHELL J. BURNSTEIN, P.A.
JAMIE ALAN COLE, P.A.
STEPHEN J. HELFMAN, P.A.
GILBERTO PASTORIZA, P.A.
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LILLIAN M. ARANGO
CARLA M. BARROW*

BROOKE P. BOLARA
RAQUEL ELEJABARRIETA
CHAD S. FRIEDMAN
OLIVER GILBERT
MACADAM J. GLINN
R. BRIAN JOHNSON
JOHN J. KENDRICK III
HARLENE SILVERN KENNEDY
KAREN LIEBERMAN*
JOHANNA M. LUNDGREN
KATHRYN M. MEHAFFEY
MATTHEW PEARL
JOHN J. QUICK
AMY J. SANTIAGO
DANIEL A. SEIGEL
GAIL D. SEROTA*
JONATHAN C. SHAMRES
ESTRELLITA S. SISILA
ALISON F. SMITH
ANTHONY C. SOROKA
EDUARDO M. SOTO
JOANNA G. THOMSON
MICHELLE D. VOS
JAMES E. WHITE
DEREK R. YOUNG

May 14, 2010

VIA E-MAIL AND FEDERAL EXPRESS

Pat C. Whitaker, Esq.
Assistant State Attorney
P.O. Box 8006
101 Bush Boulevard
Sanford, FL 32771-8006

**Re: State of Florida v. James Harris Selph
Case No. 07-05770-CFA**

Dear Pat:

In response to your letter dated April 22, 2010, which attached correspondence from Stuart Hyman expressing concerns with respect to CMI, Inc.'s ("CMI") offer to provide electronic access to the Intoxilyzer 8000 software and source code (collectively, the "Source Code"), I have discussed Mr. Hyman's letter with CMI and been authorized to represent the company's position as more fully set forth below.

Before turning to Mr. Hyman's concerns, let me respond to your inquiry regarding the need for a Uniform Act certificate under sections 942.01, *et seq.*, Florida Statutes. It is CMI's position that access to the Source Code as proposed by CMI would normally be available solely through invocation of the Uniform Act. However, since the protections of the Uniform Act are intended for the benefit of the witness, the witness may choose to forego those protections in any given instance. Without prejudice to its legal position regarding the mandatory applicability of the Uniform Act or its ability to invoke the protections of the Uniform Act in the future, in the spirit of cooperation, CMI would be willing to forego those protections in *this* instance, only, in order to assist the State.



Turning to Mr. Hyman's concerns, I would renew my observation that his selected consultant, Dr. Harley Myler, has *already* agreed to comply with CMI's identical proposal in another case and executed the required non-disclosure agreement. Access in that case was subject to precisely the same limitations and protections that I described in my earlier correspondence to you. CMI fails to see why Dr. Myler's electronic access to the Source Code would have been acceptable and adequate for analyzing the Source Code in the other case, but not in this one. Having said that, I will sequentially address each of Mr. Hyman's comments and "conditions" set forth in his April 14, 2010 letter to you.

With respect to Mr. Hyman's observations regarding what occurred in Tallahassee on October 16, 2009, CMI would like the record to be clear. CMI had *no involvement* in the court proceedings that led to the court affording relief to Mr. Hyman's clients in the form of a viewing of the software held by the Florida Department of Law Enforcement ("FDLE"). If Mr. Hyman sought and the court awarded relief that proved ineffectual, it was not the result of CMI's involvement. CMI merely requested that FDLE take appropriate measures to safeguard the software and comply with the restrictive license under which the software is presently used. At no time was CMI approached by Mr. Hyman or FDLE with inquiries regarding the relative value of the relief afforded by the court in that case.¹

As for the various "conditions" Dr. Myler seeks to impose on CMI's proposal for electronic examination of the Source Code, CMI has no problem with providing access to the Source Code for the current, *approved* version of the Intoxilyzer software used in Florida (Item 1). It is also able to provide a general history of changes to the Source Code necessitated by requests from FDLE (Item 3). Beyond that, CMI fails to see what the relevance would be of providing the Source Code for a version of the software that was never implemented in the field.²

CMI is uncertain what Mr. Hyman means by "compilation documentation" in item 2 and cannot respond to that request. CMI would note that it does not have any "data files" that are "required to produce compiled applications for the Intoxilyzer 8000 as it is used in Florida." CMI runs a commercially available compiler program to convert the Source Code into the object code that becomes the operating software for the Intoxilyzer 8000.

¹ Accordingly, CMI sees no need to be responsible "for any expenses incurred" as a precondition for the examination. As Mr. Hyman is aware, a court with proper jurisdiction is always able to sanction a party who fails to comply with its orders.

² As indicated in my earlier letter to you, CMI intends to make available all of the items described in the enclosed sheet entitled "Items Provided," as they may relate to the Intoxilyzer 8000 (rather than the 5000) and the software used in Florida (as opposed to Montana).

Pat C. Whitaker, Esq.
May 14, 2010
Page 3 of 3

In item 4, CMI is unaware of any "specialized applications" developed for use with the compilation of the Source Code. With respect to the distribution and evaluation of the "Florida Intoxilyzer Programs," please see CMI's response to item 6, below.

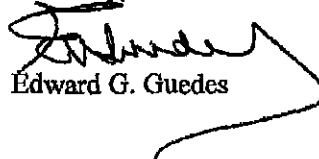
With respect to item 5, a public records request can readily be made by Mr. Hyman or Dr. Myler to FDLE to produce any "software design documentation change orders" FDLE may have issued with respect to the Florida software. CMI would have no objection to FDLE's production of those change orders.

As for item 6, CMI will make available on the computer provided on-site at CMI's headquarters in Owensboro for examination of the Source Code any and all software needed to make electronic access to the Source Code feasible. Because CMI's use of some of the software is subject to licensing - for example, the commercially available compiler - CMI cannot copy or provide the software for installation in another computer. However, such software will be available on CMI's computers for use during the examination of the Source Code.

Finally, CMI has no objection to Dr. Myler's use of HexEdit, LINK or Understand as part of his forensic examination. Moreover, CMI understands Mr. Hyman's and Dr. Myler's concerns about ensuring that the Source Code they are examining is the same Source Code for the software installed in the Florida Intoxilyzer 8000 instruments. CMI will take all reasonable measures to assuage these concerns and verify that the Source Code being examined is the correct one. However, CMI cannot agree to Dr. Myler's use of his own equipment³ during the forensic examination, unless he *explicitly* complies with the protections and limitations imposed by the Minnesota and Montana courts with respect to use of an consultant's own equipment. For ease of reference, I have enclosed again a sheet entitled "Terms of Production" that sets forth the restrictions on use of other computer equipment during the examination.

I hope you find this information useful in moving the process forward. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Edward G. Guedes

Encl.

Cc: Mr. Toby Hall, President, CMI, Inc. (w/encl.)
Nola Wright, Esq. (w/o encl.)
Allen Holbrook, Esq. (w/o encl.)

³ This response presupposes that the "equipment" in question is Dr. Myler's laptop computer. However, if other equipment is implicated or to be used in the examination, CMI would need to have that equipment identified in advance.

a. Items provided

At CMI's corporate headquarters in Owensboro, Kentucky, CMI has offered to make the Source Code available to litigants, their counsel, or experts, during regular business hours between 8 a.m. and 4:00 pm, excluding weekends, holidays, and any days when CMI is not open for regular business purposes. CMI has agreed to provide access to the following:

- I. All Source Code files for the current version of the Intoxilyzer used in the State of Florida in native electronic format, capable of review and analysis by commercial source review software such as LINT or Understand.
- II. All libraries and files used to assemble or compile and link the Source Code.
- III. All make files and script files (as applicable only to the Intoxilyzer 8000) used to assemble or compile and link the Source Code.
- IV. The compiler, assembler and linker for the Am188 processor and the compiler and linker for the 8051 processor, as applicable only to the Intoxilyzer 8000.
- V. A computer capable of viewing and reviewing the Source Code. CMI will also provide a printer for printing sections of material for ease of review on site; however, all printouts including or comprising any portion of the Source Code will be retained by CMI at the end of the evaluation.
- VI. Completely assembled or compiled flash chips and linked "HEX files" for both the Am188 and 8051 systems, and with the HEX files loaded for both the Am188 and 8051 systems as applicable only to the Intoxilyzer 8000.
- VII. A printout of actual data obtained as a result of calibration.
- VIII. A COBRA system as used by the State of Florida to download data from instruments and the cable required to link to a test instrument.
- IX. An Intoxilyzer, configured for the State of Florida for testing, loaded with the flash chips mentioned in item VI.
- X. Wet bath simulators and solution for instrument testing.



b. Terms of Production

No part of the Source Code in its native electronic format shall be copied, transmitted, or removed from CMI's corporate headquarters in Kentucky. No portion of the Source Code shall be copied verbatim except as necessary for meaningful expert review. Any notes, summaries, reports, or other documents that contain a verbatim recitation of any portion of the Source Code shall not be publicly disclosed unless all verbatim recitations of the Source Code have been completely redacted, and if filed with a court of law, shall be filed under seal. If litigants, their counsel, or expert, load the Source Code onto their own computers for analysis with commercial programs such as LINT or Understand, or for any other purpose, such computers may not have communications capabilities, including wi-fi/wireless, Ethernet, or modem capability, or such capabilities must be completely disabled. Further, such computers must have any external drives, USB ports and other data transfer capabilities disabled. If any portion of the Source Code is loaded onto a reviewer's computer, the reviewer must agree to destroy the computer's hard drive at CMI in the presence of CMI's representative, or to leave the computer's hard drive at CMI at the conclusion of the review.

[STYLE OF CASE]

NON-DISCLOSURE AGREEMENT

_____ declares that:

I reside at _____ in the City of _____, County
of _____, State of _____. My telephone number is
_____. I am currently employed by _____, located at
_____ and my current job title is _____.

I am not, and have not been, employed by (as an employee, agent, or consultant),
or otherwise affiliated with, any manufacturer of breath-alcohol testing equipment within
the past twenty-four (24) months.

In connection with the above-styled case(s), I have been conditionally granted
access to the Source Code for the Intoxilyzer 8000 breath-alcohol testing instruments
("Source Code") used in Florida, or other information that has been designated
"Confidential in the case (collectively, "Confidential Information"). I have been granted
such conditional access solely for the purpose of defending or prosecuting, or assisting in
the defense or prosecution of a criminal DUI case in Florida involving the results of a test
administered using an Intoxilyzer 8000 breath-alcohol testing instrument as part of the
evidence in the case. I understand and acknowledge that the Source Code is the
intellectual property of CMI, Inc., a corporation of the Commonwealth of Kentucky
having its principal place of business at 316 East 9th Street, Owensboro, Kentucky 42303.
I also understand and acknowledge that CMI asserts that the Source Code is a valuable
trade secret protected by applicable laws.

I have read the Court's Protective Order in the above-Styled matter, a copy of which is attached hereto.

I agree not to copy or replicate any part of the Source Code, except as necessary to perform a meaningful Source Code review. I agree that I will not reproduce, use, or disclose any Confidential Information obtained through my inspections and review of the Source Code except in accordance with the Protective Order in the above-styled case and this Non-Disclosure Agreement.

By executing this agreement and obtaining access to the Source Code or other Confidential Information, I consent to the jurisdiction of this Court for purposes of the enforcement of this agreement and this Court's Protective Order for the enforcement of this agreement.

Executed on: _____
(Date) (Signature)

Subscribed and sworn before me
this ____ day of _____, 2010.

Notary Public

PROTECTIVE ORDER

WHEREAS, this Court pursuant to the request of the Defendant(s), the State of Florida and CMI, Inc. a Kentucky Corporation, enters this protective order concerning a controlled viewing of the Source Code for the Intoxilyzer 8000 running software version 8000.27, and the Court being otherwise sufficiently advised,

IT IS HEREBY ORDERED:

1. As used in this Protective Order, the listed terms have the following meanings:
 - "Attorneys" means counsel of record in this matter;
 - "Confidential" documents and information are documents or information designated Confidential pursuant to Paragraph 2 herein; and
 - "Source Code" refers specifically to the Source Code for the Intoxilyzer 8000, manufactured by CMI, Inc., of Owensboro, Kentucky, used in the State of Florida.
2. A party may designate any document "Confidential," including interrogatory responses, other discovery responses, or transcripts, based on a good faith belief that the document constitutes or contains trade secrets or other confidential information. The Source Code is hereby designated as Confidential.
3. All Confidential documents and information shall be used solely for the purposes of the above-captioned matter. No person receiving such documents or information shall, directly or indirectly, use, transfer, disclose, or communicate in any way Confidential documents or information to any person other than those specified in Paragraph 4 herein.
4. Access to any Confidential document or information shall be limited to:
 - a. The Court and its staff;
 - b. Attorneys of record and their law firms;
 - c. Person shown on the face of the document to have authored or received it;
 - d. Court reporters retained to transcribe testimony;
 - e. The Parties to this case;
 - f. Outside vendors (limited to professional copy services); and
 - g. Outside independent persons who are retained by or otherwise assist a Party or its Attorneys to provide technical or expert services and/or give testimony in this action, and who are not, and have not been, employed by (as an employee, agent, or consultant) or otherwise affiliated with, any manufacturer of breath alcohol testing instruments within the preceding twenty-four (24) months.
5. Any outside independent person (as defined in Paragraph 4(g) herein) who receives access to the Source Code or other Confidential information shall execute a Non-Disclosure Agreement on the form attached at Exhibit A before receiving access to the Source Code or Confidential Information. In addition, any Attorney or Party (as defined in Paragraphs 4(b) and (e) herein) who receives access to the Source Code shall also execute a Non-Disclosure Agreement before receiving access to the Source Code. Receipt of access to the Source Code

pursuant to this Protective Order shall not constitute or convey any right, title, license, or other interest in any portion of the Source Code.

6. Electronic disclosure of the Source Code shall occur at CMI's corporate headquarters in Owensboro, Kentucky, and be governed by the procedures in Exhibit B. Electronic disclosures will require defense counsel to contact CMI in writing in order to obtain an approximate schedule, and time frame, within which the disclosures can be made available.
7. Non-parties producing documents in the course of this action may also designate documents as "Confidential" subject to the same protections and constraints as the Parties to this action. A copy of this Protective Order shall be served along with any subpoena served in connection with this action. All documents and information produced by such non-parties shall be treated as "Confidential" for a period of 15 days from the date of their production, and during that period any Party may designate such documents as "Confidential" pursuant to the terms of this Protective Order.
8. Any testimony or written report that contains Confidential documents or information will receive the same protections afforded to Confidential documents themselves. Confidentiality designations for testimony shall be made on the record or, where appropriate, by written notice to the other Party. It shall be the responsibility of the Party who noticed the deposition, called the witness, or seeks to introduce the evidence, to designate such testimony or information as Confidential. The testimony of any witness (or any portion of such testimony) that contains Confidential information shall be given only in the presence of persons who are qualified to have access to such information pursuant to Paragraph 4 herein.
9. Any party or non-party that inadvertently fails to identify documents or information as Confidential in accordance with this Protective Order shall upon discovery of its oversight, promptly provide written notice of the error and substitute appropriately designated documents or information. Any Party receiving notice of improperly designated documents or information shall act immediately to retrieve such documents or information from persons not entitled to receive such documents or informations and shall return the improperly designated documents or information to the producing Party.
10. Any document designated Confidential or containing Confidential information that is filed with this Court, including any expert report, shall be filed under seal. Any Confidential information shall be redacted from such document or report before it is made publicly available.
11. No action taken in accordance with this Protective Order shall be construed to be a waiver of any claim or defense in the action or of any position as to discoverability or admissibility of any evidence in the case.
12. The Obligations imposed by this Protective Order shall survive the termination of the above-captioned matter.
13. Any violation or breach of the terms and conditions set forth in this Protective Order shall be grounds for any appropriate sanctions available under the law.

IT IS SO ORDERED:

Dated: _____

County Court Judge

Edward G. Guedes

From: Leslie Sammis [lsammis@sammislawfirm.com]
Sent: Thursday, July 22, 2010 9:53 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,

What good would a conference call do if CMI is unwilling to response to Dr. Myler's request in writing in advance? Certainly, responding in writing would make the conference call more productive.

I'll ask you directly, do you know if CMI is in possession of the material contained in Dr. Myler's request?

According to it's website, CMI is a subsidiary company of MPD, Inc.

CMI's sister companies include MPD Components, Inc., MPH Industries, Inc., Lion Laboratories Limited (based in Barry, Wales, United Kingdom) and MPD PTE LTD (based in Singapore). According to the website for MPD, Inc., Lion Laboratories Limited manufactures a broad range of breath alcohol testing instruments that use fuel cell sensors (a technology pioneered by Lion) and infrared spectrometry. The website for MPD, Inc., also states that Lion and CMI represent the "largest organization in breath alcohol analysis in the world today, a field in which they are entirely specialized." Since Lion pioneered the technology, why wouldn't Lion keep the only unencrypted version of the software?

So don't you think it is possible that CMI only has an encrypted version of the source code? Laura Barfield is in possession of only an encrypted version of certain Florida specific software. In fact, Dr. Myler traveled to Tallahassee only to find out that the only thing available was an encrypted version of certain software. So, CMI and FDLE intentionally wasted Dr. Myler's time and Mr. Hyman's money. If CMI and FDLE didn't know that only an encrypted version of the software was available, then that must mean that CMI doesn't possess an unencrypted version (or will eventually claim not to possess it).

Why should anyone assume that CMI is even capable of releasing an unencrypted version of the source code? What if the unencrypted version of the source code is in the United Kingdom or Singapore?

In fact, your own website says that you represent a "multi-national corporate manufacturer" of breath testing equipment. Let's find out if an unencrypted version of the software is even located in this nation.

Before we all waste time waiting on a conference call, why don't you ask CMI to confirm in writing whether it is in possession of the material requested by Dr. Myler at it's facility in Kentucky? Then ask them if they are willing to release it. If so, ask them what terms and condition they would impose on the exchange. Put that in writing first, then any other issues can be discussed in the conference call.

Sincerely,

7/28/2010



Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602

On Jul 22, 2010, at 12:19 PM, Edward G. Guedes wrote:

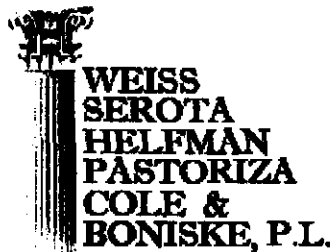
We are running into scheduling problems with Mr. Hyman and Dr. Myler in terms of holding our conference call. Pat Whitaker is continuing to try to schedule something. Ms. Sammis, since you are working with Dr. Myler as well, I'm open to suggestions how we make this conference call happen sooner rather than later.

Simply forwarding Dr. Myler's list to CMI, as you suggest in your e-mail, will not suffice. We attempted precisely that when Mr. Hyman provided us with a very similar (if not identical) list of Dr. Myler's "needs" and ended up having a whole host of questions from one side or the other that none of the lawyers could answer. When you write that "CMI, Inc. will either respond in writing to that inquiry within the time allotted or it will refuse to do so," that's not entirely accurate. CMI is not refusing to respond to the inquiry; we would *prefer* to respond to the inquiry meaningfully and in a manner that potentially resolves issues for everyone involved.

If, however, the August 2 deadline is "inflexible" and additional time cannot be obtained, and we are not able to schedule the necessary conference call before then, then CMI will respond to the best of its ability expressing its position as clearly as possible. CMI will continue, notwithstanding any premature response, to continue to try to reach an understanding with Dr. Myler and relevant defense counsel with respect to a forensic examination of the source code.

Regards,

Ed Guedes



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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Monday, July 19, 2010 8:51 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Dear Mr. Guedes,

The Courts in Hillsborough County have proposed a more direct approach. The State of Florida has been ordered to make the following inquiry of CMI:

1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
4. Additionally, in the event CMI, Inc., is unwilling to release any or all of the source code materials listed in Defendant's Exhibit "B," the terms and conditions under which CMI, Inc., is willing to release any other information related to the source code and specifically, what that information will be.

CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquiry in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
813-250-0500

On Jul 19, 2010, at 5:31 PM, Edward G. Guedes wrote:

We will endeavor to resolve these issues as quickly as possible. As Dr. Myler is aware, we have been engaged in ongoing discussions with ASA Pat Whitaker and attorney Stuart Hyman in Seminole County to try to resolve the mechanics of conducting the forensic examination in Owensboro, KY. The next step in the process was to be a telephone conference with Mr. Hyman, Dr. Myler, a CMI engineer and myself to discuss the particulars of the information needed. As Mr. Hyman and I quickly learned, the attorneys lack the expertise to meaningfully discuss what's needed without also having the experts participate in the discussion. We found ourselves asking questions of each other that neither of us knew the answer to. CMI has agreed to make its chief engineer available for a telephone conference to discuss with Dr. Myler directly what he perceives

is necessary.

I e-mailed ASA Whitaker last week to find out when this call could take place, but I have not yet heard back from him. It's quite possible that he's trying to arrange the date and time for the call with Mr. Hyman. I've copied Pat on this e-mail so he knows this issue is arising also in Hillsborough County.

The response deadline apparently imposed on CMI in this case – without CMI's participation – is somewhat arbitrary, but we will endeavor to meet it in order to keep this process moving forward. I would much rather have a meaningful discussion with Dr. Myler and the CMI engineer on the line, after which the parameters of an inspection can be intelligently addressed, than submit an incomplete response by the deadline (assuming we can't meet the deadline, which I remain hopeful we can).

If defense counsel in *this* case would like to listen in on the conference call with Dr. Myler and the CMI engineer, I don't see that that would be a problem. The primary purpose of the call, though, is to have those individuals who have the technical expertise converse directly with each other about Dr. Myler's needs.

Regards,

Ed



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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]
Sent: Monday, July 19, 2010 11:45 AM
To: Edward G. Guedes
Cc: 'garcia_c@sao13th.com'; 'lsammis@sammislawfirm.com'; 'lsammis@sammislawfirm.com'
Subject: FW: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,
Please refer to the attached emails below.

Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Mylar is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code viewing, also at CMI in Kentucky, being set up through Judge Herr's verbal order out of Seminole County.

Can you contact Ms. Garcia, or can Ms. Garcia contact you, in reference to the items listed below, as well as to begin facilitating the source code viewing by the defense? I believe it would be easier if the counsel for both sides worked directly with you in reference to this. I will remain available to assist, if or when necessary, as well.

Please let me know if this process can begin via contact with Ms. Garcia, representing the State, to answer the questions or needed information for the defense listed below.

Thanks,
Laura

From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: 'lsammis@sammislawfirm.com'; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura -- my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday, with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) –
Deadline for the State of Florida to provide CMI's response to Sammis Law firm
August 9 (hard deadline falls on a weekend so deadline is rolled over to next business day) –
Sammis Law Firm's deadline to provide it's response to CMI's response (the five day response
period will begin to run on the date that CMI's response is provided Sammis Law Firm.....so if CMI's
response is provided on July 23, the Sammis Law Firm's response will be due no later than July 30)

Leslie – My understanding was that you would be drafting an Order which reflects the Court's
instructions on Friday. I would like to see a draft of your proposed Order before it is presented to
the Court, as it should reflect what our collective understanding of what the Judge's ruling was.
Feel free to email it to me at this address, as that will be the most expeditious way to get this
done. I look forward to seeing the Order in the next couple days.

From: Leslie Sammis [<mailto:lsammis@sammislawfirm.com>]
Sent: Sunday, July 18, 2010 12:34 PM
To: Barfield, Laura
Cc: Garcia, Candace A.; jsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines
in Hillsborough County, FL

Laura Barfield,

I do need additional information from you. As I understood the court's order from June
16th, the State of Florida has 15 days to file a written response addressing the issue of
whether CMI is willing to release the source code to Dr. Myler and the exact terms under
which such an exchange would occur. So if you have never asked CMI about the terms
under which they would release the source code, the State of Florida is now required to do
so.

I suggest that you write CMI a
letter explaining what Ms. Garcia is required to file within the 15 day period. You should
ask CMI to review the request made by Dr. Myler which I have attached below. You must
find out as a preliminary matter if CMI is in possession of each piece of material requested
by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I
suggest that you ask CMI under what terms they would be willing to release such
information to Dr. Myler. If CMI is not in possession of the material requested by Dr.
Myler, then you have an obligation to find out which of the items listed below is not
possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then t
hey better be willing to articulate their position in writing within the next 15
days. I will eagerly await your response.

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

1. The source code versions for all software that has run in Florida Intoxilyzers to date to include unapproved versions that were used in Florida during pre-approval stages.
2. Source code compilation documentation as well as any data files required to produce compiled applications for the Intoxilyzer 8000 as it is used in Florida. This being the requisite compilation data to produce the files contained on distribution CD's as well as executable application files as intended to be downloaded for use in Florida Intoxilyzers.
3. Revision histories detailing changes made to the software for documentation and source code control purposes. Additionally, any source code control data files.
4. Any specialized applications developed for use with the compilation, distribution and evaluation, to include simulators, of the Florida Intoxilyzer programs. If these applications were produced in-house and have bearing on the analytical or reporting aspects of the machine, then the source code used to produce them will be required as well.
5. Software design documentation and change orders specific to Florida Intoxilyzer software.
6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

—
Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (fx)
409.790.1329 (cl)

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Harley R. Myler, Ph.D., P.E. invokes privileges incorporated into Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This message should not be construed as a final opinion unless otherwise stated.

On Jul 17, 2010, at 10:57 AM, Barfield, Laura wrote:

The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

7/28/2010

Edward G. Guedes

From: Pat WHITAKER [PWHITAKER@sa18.state.fl.us]
Sent: Monday, July 26, 2010 2:33 PM
To: Edward G. Guedes
Subject: RE: Judge Eriksson's order authorizing subpoenas to be issued to CMI agent

Ed, I just got word from Hyman that he will not be able to participate in the phone call on July 28th. August 2nd is still available at 4:30 p.m. Will that work for you and the CMI engineer?

Pat Whitaker
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> 7/26/2010 12:54 PM >>>

Pat,

Who is coordinating the call on Wednesday? Should I call you or do we need to set up a conference line?

Ed

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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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7/28/2010

attachments.

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From: Pat WHITAKER [mailto:PWHITAKER@sa18.state.fl.us]

Sent: Wednesday, July 21, 2010 9:13 AM

To: Edward G. Guedes

Subject: Judge Eriksson's order authorizing subpoenas to be issued to CMI agent

Ed, I would like to speak with you concerning the cases included in your writ of cert in Seminole County. I may want to attempt to remove some of the cases included in the writ so the State can proceed without using the Intoxilyzer results. Please call me when you get a chance. 407-665-6404 or cell: 407-415-7859.

Pat Whitaker
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

7/28/2010

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Thursday, August 05, 2010 12:07 PM
To: Garcia, Candace A.; Barfield, Laura
Subject: Update re Source Code Examination
Importance: High

Candace and Laura,

On August 2, 2010, CMI's chief engineer held a 90-minute conference call with Stuart Hyman, Dr. Harley Myler, Steven Daniels and myself to discuss the parameters of a possible forensic examination of the source code at CMI's headquarters in Kentucky. During the call, Dr. Myler and CMI's engineer discussed the details of Dr. Myler's needs in order to ensure that CMI understood fully what he was seeking. At the conclusion of the call – which I believe was very productive – Mr. Hyman indicated that he was looking to coordinate with defense counsel from around the state to work out final details in the hopes of developing an examination model that would work statewide. He also indicated that there was an upcoming meeting of the criminal defense bar at which this subject was going to be discussed extensively.

From CMI's end, we are in the process of reviewing our notes from the call and determining what can and cannot be accomplished and under what conditions. Mr. Hyman intends to apprise the judges in Seminole County that the process of finalizing an "arrangement" might take 30 days, in order for both sides to have sufficient time to consider options. I would copy Mr. Hyman on this e-mail, but he does not use e-mail (according to him). You should feel free to confirm any of these details with his office, though.

I am hopeful that CMI will be ready with its position sooner than 30 days, but we're only one party, as compared with the various defense attorneys with whom Mr. Hyman may need to consult. By the same token, I don't want to report CMI's position prematurely in Hillsborough County before Mr. Hyman and Dr. Myler have had the benefit of conferring with the appropriate individuals.

Please keep me informed of any additional proceedings in Hillsborough County. I was to be as responsive as possible to the judges there, while at the same time respecting the interests of the defense bar and judges in other areas of the state as we strive towards a possible solution.

Regards,

Ed



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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323

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Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Wednesday, August 18, 2010 7:27 AM
To: 'Garcia, Candace A.'; Barfield, Laura
Cc: Muratti, Renee
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Attachments: image001.jpg

Good morning!

A brief update as to where things stand. I anticipate having CMI's position regarding the source code examination by the 24th, addressing Dr. Myler's various requests. I won't know by then what Mr. Hyman's position will be, but I should be able to transmit CMI's supplemental response by then.

You should also be aware that I will be appearing at a hearing on August 30 in Sarasota County to address this same issue. I intend to communicate to the court there the same position we'll be communicating to you.

Should you have any questions, please don't hesitate to contact me.

Regards,

Ed



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
www.wsh-law.com
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From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Wednesday, July 28, 2010 2:00 PM
To: Edward G. Guedes
Cc: Muratti, Renee
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

419 North Pierce Street
Tampa, Florida 33602

You can send everything to my attention and it will get to me. Thanks for your continued cooperation on this!

From: Edward G. Guedes [mailto:EGuedes@wsh-law.com]
Sent: Wednesday, July 28, 2010 1:56 PM
To: Garcia, Candace A.
Cc: Muratti, Renee
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Candace,

Could you provide me with your mailing address, please?

Thanks!

Edward G. Guedes

8/18/2010

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
www.wsh-law.com
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From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Tuesday, July 27, 2010 8:41 AM
To: Edward G. Guedes; Barfield, Laura
Cc: Pat WHITAKER; Muratti, Renee
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Ed – I think your suggestion of preparing a preliminary report for the Court explaining CMI's efforts in coordinating a meeting is great and I would like to go ahead and to do that. I think these judges will appreciate the update and see that a sign in the right direction towards some sort of resolution. I suspect defense counsel will take issue with the adequacy of what we provide to the Court on that date, but frankly I don't think the judges will.

From: Edward G. Guedes [mailto:EGuedes@wsh-law.com]
Sent: Monday, July 26, 2010 5:26 PM
To: Barfield, Laura; Garcia, Candace A.
Cc: Pat WHITAKER
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

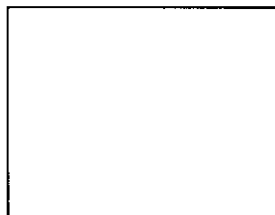
I'm alerting you both to what to expect re CMI's response in Hillsborough County. Despite my best efforts (and Pat Whitaker can vouch for this), I received an e-mail today from Pat informing me that Stuart Hyman could not participate in the conference call which had been scheduled for the 28th at 12:30. Consequently, the call is being postponed until August 2 at 4:30 p.m. That will not leave CMI sufficient time to provide a meaningful response to the State regarding the examination of the source code. There is no way for me to process with CMI all the information obtained during the call so as to formulate a formal position regarding what CMI is willing to provide and under what conditions, and still meet the August 2 deadline.

I'm happy to prepare a preliminary response that addresses the efforts that are being undertaken, verifying that we actually have all the information that Dr. Myler is requesting, explain that there is actually an ongoing examination of the source code at CMI at this very moment, but that because of scheduling delays with Dr. Myler and Seminole County defense counsel, we have not been able to iron out the details before the court-imposed deadline expired.

It is up to the State if it wishes to obtain relief from the court with respect to the August 2 deadline. If so, please let me know and I will refrain from preparing the preliminary report. Otherwise, you'll get a preliminary report shortly before August 2 with a more substantive report as soon thereafter as possible.

Regards,

Ed



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
www.wsh-law.com
 Tel: (305) 854-0800
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8/18/2010

From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Thursday, July 22, 2010 9:53 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@sao13th.com; jsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,

What good would a conference call do if CMI is unwilling to response to Dr. Myler's request in writing in advance? Certainly, responding in writing would make the conference call more productive.

I'll ask you directly, do you know if CMI is in possession of the material contained in Dr. Myler's request?

According to it's website, CMI is a subsidiary company of MPD, Inc.

CMI's sister companies include MPD Components, Inc., MPH Industries, Inc., Lion Laboratories Limited (based in Barry, Wales, United Kingdom) and MPD PTE LTD (based in Singapore). According to the website for MPD, Inc., Lion Laboratories Limited manufactures a broad range of breath alcohol testing instruments that use fuel cell sensors (a technology pioneered by Lion) and infrared spectrometry. The website for MPD, Inc., also states that Lion and CMI represent the "largest organization in breath alcohol analysis in the world today, a field in which they are entirely specialized." Since Lion pioneered the technology, why wouldn't Lion keep the only unencrypted version of the software?

So don't you think it is possible that CMI only has an encrypted version of the source code? Laura Barfield is in possession of only an encrypted version of certain Florida specific software. In fact, Dr. Myler traveled to Tallahassee only to find out that the only thing available was an encrypted version of certain software. So, CMI and FDLE intentionally wasted Dr. Myler's time and Mr. Hyman's money. If CMI and FDLE didn't know that only an encrypted version of the software was available, then that must mean that CMI doesn't possess an unencrypted version (or will eventually claim not to possess it).

Why should anyone assume that CMI is even capable of releasing an unencrypted version of the source code? What if the unencrypted version of the source code is in the United Kingdom or Singapore?

In fact, your own website says that you represent a "multi-national corporate manufacturer" of breath testing equipment. Let's find out if an unencrypted version of the software is even located in this nation.

Before we all waste time waiting on a conference call, why don't you ask CMI to confirm in writing whether it is in possession of the material requested by Dr. Myler at it's facility in Kentucky? Then ask them if they are willing to release it. If so, ask them what terms and condition they would impose on the exchange. Put that in writing first, then any other issues can be discussed in the conference call.

Sincerely,

Leslie Sammis
 Sammis Law Firm, P.A.
 1005 N. Marion St.
 Tampa, FL 33602

On Jul 22, 2010, at 12:19 PM, Edward G. Guedes wrote:

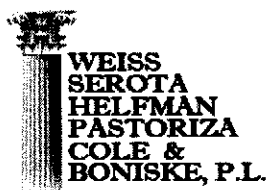
We are running into scheduling problems with Mr. Hyman and Dr. Myler in terms of holding our conference call. Pat Whitaker is continuing to try to schedule something. Ms. Sammis, since you are working with Dr. Myler as well, I'm open to suggestions how we make this conference call happen sooner rather than later.

Simply forwarding Dr. Myler's list to CMI, as you suggest in your e-mail, will not suffice. We attempted precisely that when Mr. Hyman provided us with a very similar (if not identical) list of Dr. Myler's "needs" and ended up having a whole host of questions from one side or the other that none of the lawyers could answer. When you write that "CMI, Inc. will either respond in writing to that inquiry within the time allotted or it will refuse to do so," that's not entirely accurate. CMI is not refusing to respond to the inquiry; we would *prefer* to respond to the inquiry meaningfully and in a manner that potentially resolves issues for everyone involved.

If, however, the August 2 deadline is "inflexible" and additional time cannot be obtained, and we are not able to schedule the necessary conference call before then, then CMI will respond to the best of its ability expressing its position as clearly as possible. CMI will continue, notwithstanding any premature response, to continue to try to reach an understanding with Dr. Myler and relevant defense counsel with respect to a forensic examination of the source code.

Regards,

Ed Guedes



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
www.wsh-law.com
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From: Leslie Sammis [mailto:lsammis@sammislawfirm.com]
Sent: Monday, July 19, 2010 8:51 PM
To: Edward G. Guedes
Cc: Barfield, Laura; garcia_c@saol3th.com; lsammis@sammislawfirm.com; Pat WHITAKER
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Dear Mr. Guedes,

The Courts in Hillsborough County have proposed a more direct approach. The State of Florida has been ordered to make the following inquiry of CMI:

1. Whether CMI, Inc., is in possession of any or all of the source code materials listed in Defendant's Exhibit "B";
2. Whether CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B"; and
3. The terms and conditions under which CMI, Inc., is willing to release any or all of the source code materials requested in Defendant's Exhibit "B".
4. Additionally, in the event CMI, Inc., is unwilling to release any or all of the source code materials listed in Defendant's Exhibit "B," the terms and conditions under which CMI, Inc., is willing to release any other information related to the source code and specifically, what that information will be.

CMI, Inc., will either respond in writing to that inquiry within the time allotted or it will refuse to do so. Either way, the Courts in Hillsborough County will then be able to evaluate Laura Barfield's testimony that CMI is willing to release the source code to Dr. Myler.

Please forward Dr. Myler's request as listed in Defendant's Exhibit "B" to CMI. Since you represent a "multi-national corporate manufacturer," I am sure that you understand the importance of first determining whether the items listed in Defendant's Exhibit "B" are physically in CMI's possession at its facility in Kentucky. If so, determining what source code material will be provided to Dr. Myler and the terms under which it will be provided should be quite easy for CMI to articulate in writing. Additionally, by addressing the State of Florida's inquiry in writing, CMI will also help facilitate a more meaningful discussion between Dr. Myler and CMI's software engineer for the yet to be scheduled conference call.

I will not participate in the conference call. Instead, I will wait for the State of Florida to file a copy of CMI's written response to its inquiry within the time allowed by the Courts in Hillsborough County.

Sincerely,

Leslie Sammis
 Sammis Law Firm, P.A.
 1005 N. Marion St.
 Tampa, FL 33602
 813-250-0500

On Jul 19, 2010, at 5:31 PM, Edward G. Guedes wrote:

We will endeavor to resolve these issues as quickly as possible. As Dr. Myler is aware, we have been engaged in ongoing discussions with ASA Pat Whitaker and attorney Stuart Hyman in Seminole County to try to resolve the mechanics of conducting the forensic examination in Owensboro, KY. The next step in the process was to be a telephone conference with Mr. Hyman, Dr. Myler, a CMI engineer and myself to discuss the particulars of the information needed. As Mr. Hyman and I quickly learned, the attorneys lack the expertise to meaningfully discuss what's needed without also having the experts participate in the discussion. We found ourselves asking questions of each other that neither of us knew the answer to. CMI has agreed to make its chief engineer available for a telephone conference to discuss with Dr. Myler directly what he perceives is necessary.

I e-mailed ASA Whitaker last week to find out when this call could take place, but I have not yet heard back from him. It's quite possible that he's trying to arrange the date and time for the call with Mr. Hyman. I've copied Pat on this e-mail so he knows this issue is arising also in Hillsborough County.

The response deadline apparently imposed on CMI in this case – without CMI's participation – is somewhat arbitrary, but we will endeavor to meet it in order to keep this process moving forward. I would much rather have a meaningful discussion with Dr. Myler and the CMI engineer on the line, after which the parameters of an inspection can be intelligently addressed, than submit an incomplete response by the deadline (assuming we can't meet the deadline, which I remain hopeful we can).

If defense counsel in *this* case would like to listen in on the conference call with Dr. Myler and the CMI engineer, I don't see that that would be a problem. The primary purpose of the call, though, is to have those individuals who have the technical expertise converse directly with each other about Dr. Myler's needs.

Regards,

Ed



Edward G. Guedes
 Partner
 Board Certified in Appellate Practice

8/18/2010

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.
 2525 Ponce de Leon Blvd., Suite 700
 Coral Gables, FL 33134
www.wsh-law.com
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From: Barfield, Laura [<mailto:LauraBarfield@fdle.state.fl.us>]
Sent: Monday, July 19, 2010 11:45 AM
To: Edward G. Guedes
Cc: 'garcia_c@sa013th.com'; 'jsammis@sammlawfirm.com'; 'jsammis@sammlawfirm.com'
Subject: FW: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL
Importance: High

Mr. Guedes,
 Please refer to the attached emails below.

Ms. Candice Garcia is the Assistant State Attorney handling the cases heard in Hillsborough County on July 16th. Ms. Leslie Sammis (or Mr. Jason Sammis) is the defense counsel and has attached the items Dr. Mylar is requesting when viewing the source code at CMI in Kentucky. These are the same, or similar, items being requested by the defense for the source code viewing, also at CMI in Kentucky, being set up through Judge Herr's verbal order out of Seminole County.

Can you contact Ms. Garcia, or can Ms. Garcia contact you, in reference to the items listed below, as well as to begin facilitating the source code viewing by the defense? I believe it would be easier if the counsel for both sides worked directly with you in reference to this. I will remain available to assist, if or when necessary, as well.

Please let me know if this process can begin via contact with Ms. Garcia, representing the State, to answer the questions or needed information for the defense listed below.

Thanks,
 Laura

From: Garcia, Candace A. [mailto:Garcia_C@SAO13th.com]
Sent: Sunday, July 18, 2010 4:26 PM
To: 'Leslie Sammis'; Barfield, Laura
Cc: 'jsammis@sammlawfirm.com'; Muratti, Renee; Covington, Douglas
Subject: RE: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

As a follow up to Leslie's email below and to hopefully clear up any confusion on your part Laura – my understanding of the Judges' Order on Friday was that CMI (through it's Florida counsel) will now have the opportunity to review Dr. Myler's email. The email is to be treated as Dr. Myler's request for information from CMI. CMI is then required to respond, within 15 days of last Friday, with it's offer as to what information it is willing to make available. I really do not believe the Court's Order is any more complicated than that.

August 2 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Deadline for the State of Florida to provide CMI's response to Sammis Law firm
 August 9 (hard deadline falls on a weekend so deadline is rolled over to next business day) – Sammis Law Firm's deadline to provide it's response to CMI's response (the five day response period will begin to run on the date that CMI's response is provided Sammis Law Firm.....so if CMI's response is provided on July 23, the Sammis Law Firm's response will be due no later than July 30)

Leslie – My understanding was that you would be drafting an Order which reflects the Court's instructions on Friday. I would like to see a draft of your proposed

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Order before it is presented to the Court, as it should reflect what our collective understanding of what the Judge's ruling was. Feel free to email it to me at this address, as that will be the most expeditious way to get this done. I look forward to seeing the Order in the next couple days.

From: Leslie Sammis [<mailto:lsammis@sammislawfirm.com>]
Sent: Sunday, July 18, 2010 12:34 PM
To: Barfield, Laura
Cc: Garcia, Candace A.; lsammis@sammislawfirm.com
Subject: Re: Contact Information for CMI Attorney and the Intoxilyzer 8000 Machines in Hillsborough County, FL

Laura Barfield,

I do need additional information from you. As I understood the court's order from June 16th, the State of Florida has 15 days to file a written response addressing the issue of whether CMI is willing to release the source code to Dr. Myler and the exact terms under which such an exchange would occur. So if you have never asked CMI about the terms under which they would release the source code, the State of Florida is now required to do so.

I suggest that you write CMI a letter explaining what Ms. Garcia is required to file within the 15 day period. You should ask CMI to review the request made by Dr. Myler which I have attached below. You must find out as a preliminary matter if CMI is in possession of each piece of material requested by Dr. Myler. If CMI is in possession of the material requested by Dr. Myler, then I suggest that you ask CMI under what terms they would be willing to release such information to Dr. Myler. If CMI is not in possession of the material requested by Dr. Myler, then you have an obligation to find out which of the items listed below is not possessed by CMI and report your findings to the Court.

If CMI is willing to release the source code as you indicated under oath in open court, then they better be willing to articulate their position in writing within the next 15 days. I will eagerly await your response.

Leslie Sammis
Sammis Law Firm, P.A.
1005 N. Marion St.
Tampa, FL 33602
lsammis@sammislawfirm.com

[Defendants' Exhibit "B" - the list of material necessary for Dr. Myler's analysis]

To perform an appropriate analysis of the Intoxilyzer 8000 source code in support of defendants in the State of Florida who have been subjected to evidence produced by these machines, the following will be necessary:

1. The source code versions for all software that has run in Florida Intoxilyzers to date to include unapproved versions that were used in Florida during pre-approval stages.
2. Source code compilation documentation as well as any data files required to produce compiled applications for the Intoxilyzer 8000 as it is used in Florida. This being the requisite compilation data to produce the files contained on distribution CD's as well as executable application files as intended to be downloaded for use in Florida Intoxilyzers.
3. Revision histories detailing changes made to the software for documentation and source code control purposes. Additionally, any source code control data files.
4. Any specialized applications developed for use with the compilation, distribution and evaluation, to include simulators, of the Florida Intoxilyzer programs. If these applications were produced in-house and have bearing on the analytical or reporting aspects of the machine, then the source code used to produce them will be required as well.
5. Software design documentation and change orders specific to Florida Intoxilyzer software.
6. Specifications for source code development software to include any IDE's, compilers, assemblers or other commercial software utilized to process the Florida Intoxilyzer source code. If any tools are no longer available then these must be supplied, along with any requisite installation packages, with the source code.

This list may be supplemented or modified if additional information, including additional information from CMI, the State of Florida, defendants counsel or the court is received.

—
Harley R. Myler, Ph.D., P.E.
2495 Evalon Street
Oaks Historic District
Beaumont, Texas 77702

<http://www.myler.org>
409.838.2327 (ph)
713.490.3534 (fx)
409.790.1329 (cl)

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8/18/2010

immediately by e-mail.

Harley R. Myler, Ph.D., P.E. invokes privileges incorporated into Exemption 5 of the Freedom of Information Act, 5 U.S.C. § 552(b)(5). This message should not be construed as a final opinion unless otherwise stated.

On Jul 17, 2010, at 10:57 AM, Barfield, Laura wrote:

The contact information for the attorney that represents CMI in Florida is as follows:

Edward G. Guedes
Weiss, Serota, Helfman, Pastoriza, Cole & Boniske, P.L.
2525 Ponce De Leon Boulevard
Suite 700
Coral Gables, FL 33134

Phone: (305) 854-0800
Fax: (305) 854-2323

Email: EGuedes@wsh-law.com

Please let me know if you need any additional information.

Thanks,
Laura

8/18/2010

Barfield, Laura

From: Edward G. Guedes [EGuedes@wsh-law.com]
Sent: Monday, October 11, 2010 9:39 PM
To: 'Wooten, Wayne'; Barfield, Laura; 'Pat WHITAKER'; MTC - Lee Cohen; 'Elizabeth Parker'; 'Paunece Hodgerson'; cramey@scgov.net; erica.arend@mymanatee.org; earend@scgov.net; cliff.ramey@mymanatee.org
Subject: RE: 5th DCA Ruling - Intoxilyzer 8000 approved; software does not need to be approved but evaluated by FDLE
Importance: High

Dear colleagues,

As far as CMI can tell, the defense bar has since the September 23 FACDL meeting retreated from its initial offer to engage in meaningful discussions to arrange for a forensic examination of the source code subject to appropriate protections. CMI's good faith efforts to engage in such a dialogue (which included providing a detailed proposed protective order) have been met with silence, at best, or direct rebuke in other instances. In light of the Fifth District's interpretation of Rule 11D-8.003 and its unequivocal holdings that (1) the I-8000 running version 8100.26 of the software is an approved instrument under Florida's Implied Consent Law, and (2) that new software revisions do not negate prior approvals of an instrument, the "materiality" findings of so many county courts with respect to the need for the source code is now *profoundly* in question. And since the Fifth District's decision in *Berne* is the *only* district court of appeal decision on the subject, it is controlling throughout the state until such time as another DCA rules to the contrary.

CMI is presently evaluating the significance of this decision and how it will affect its continued efforts at negotiating an examination of the source code.

Regards,

Ed Guedes



**WEISS
SEROTA
HELFMAN
PASTORIZA
COLE &
BONISKE, P.L.**

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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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From: Wooten, Wayne [mailto:WWooten@sao9.org]

Sent: Monday, October 11, 2010 1:14 PM

To: 'Barfield, Laura'; 'Pat WHITAKER'; MTC - Lee Cohen; 'Elizabeth Parker'; 'Paunece Hodgerson'

Cc: Edward G. Guedes

Subject: RE: 5th DCA Ruling - Intoxilyzer 8000 approved; software does not need to be approved but evaluated by FDLE

Thanks Laura

Will review and see if we want to pull our En Banc back in to reconsider.

Pat

Any progress on the examination issue?

Wayne

-----Original Message-----

From: Barfield, Laura [mailto:LauraBarfield@fdle.state.fl.us]

Sent: Monday, October 11, 2010 12:23 PM

To: 'Pat WHITAKER'; MTC - Lee Cohen; 'Elizabeth Parker'; Wooten, Wayne; 'Paunece Hodgerson'

Cc: 'Edward G. Guedes'

Subject: 5th DCA Ruling - Intoxilyzer 8000 approved; software does not need to be approved but evaluated by FDLE

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIFTH DISTRICT
JULY TERM 2010

DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,

Petitioner,

v.

Case No. 5D09-4648

GARY BERNE,

Respondent.

Opinion filed October 8, 2010

Petition for Certiorari Review of Decision
from the Circuit Court for Orange County
Acting in its Appellate Capacity.

Robin F. Lotane, General Counsel and
Heather Rose Cramer, Assistant General
Counsel, Department of Highway Safety
and Motor Vehicles, Lake Worth, for
Petitioner.

Stuart I. Hyman of Stuart I. Hyman, P.A.,
Orlando, for Respondent.

SAWAYA, J.

The Department of Highway Safety and Motor Vehicles ("the Department") petitions this court for certiorari review of a circuit court order quashing the decision of an administrative hearing officer that sustained the driver's license suspension of Respondent, Gary Berne, after he was arrested for driving under the influence of alcohol in violation of section 316.193, Florida Statutes (2005). We grant the Petition and quash the circuit court order.

After he was arrested for driving under the influence of alcohol, Berne submitted to a breath test on the Intoxilyzer 8000 utilizing 8100.26 software. The test results revealed a blood alcohol level in excess of 0.08. As a result, Berne's driver's license was administratively suspended. Berne subsequently requested and received a formal review hearing pursuant to section 322.2615(6)(a), Florida Statutes (2005). The facts of the underlying events that lead to Berne's arrest and driver's license suspension are clearly explained in the hearing officer's order sustaining the administrative suspension, and so we will parrot them here.

On July 14, 2006, Trooper Hawkins, of the Florida Highway Patrol, was dispatched to a crash involving Mr. Berne. After completing the crash investigation, Trooper Hawkins read Mr. Berne his Miranda Rights at which time he admitted to driving the vehicle that was involved in the crash. Trooper Hawkins detected the following: the odor of alcohol emitting from his breath, he swayed while standing, and his speech was slurred. Mr. Berne admitted to consuming two glasses of wine prior to driving.

Mr. Berne consented to the following field sobriety exercises: Horizontal Gaze Nystagmus, walk and turn, finger to nose, and one leg stand. Mr. Berne did not maintain his balance nor follow instructions throughout.

Mr. Berne was placed under arrest for DUI and transported to the Orange County DUI Breath Testing Center. Mr. Berne submitted samples of .137 and .131. Mr. Berne's privilege to operate a motor vehicle was suspended for six months for driving with an unlawful alcohol level.

CONCLUSIONS OF LAW AND FACT

1. The arresting law enforcement officer did have probable cause to believe that you were driving or in actual physical control of a motor vehicle in this state while under the influence of alcoholic beverages or controlled substances.
2. You were lawfully arrested and charged with a violation of section 316.193, Florida Statutes.

3. You did have an unlawful alcohol level of .08 or higher.

Based upon the above findings of fact and the conclusions of law, the hearing officer concludes that your driving privilege was properly suspended and is sustained effective October 24, 2006. Your suspension is for a period of six months effective July 14, 2006 to expire January 13, 2007. Florida law requires that you surrender all driver licenses. If you have a license in your possession, please mail it to the address listed above.

We note, parenthetically, that the hearing officer complied with the proper scope of review. See § 322.2615(7)(a), Fla. Stat. (2005); see also Dep't of Highway Safety & Motor Vehicles v. Mowry, 794 So. 2d 657, 658 (Fla. 5th DCA 2001).

Dissatisfied with the hearing officer's order, Berne availed himself of the right to have that decision reviewed by filing a petition for writ of certiorari in the circuit court. It is the third finding and conclusion made by the hearing officer—that Berne had a blood alcohol level of .08 or higher—that prompted the circuit court to grant the petition and quash the suspension order. The circuit court explained in pertinent part:

[T]he Petitioner argues that the breath test results obtained from him were not properly approved since they were obtained by use of a breath testing machine that had not been properly approved pursuant to F.D.L.E. Rule 11D-8.003. Under Florida's "Implied Consent Law," only approved breath testing machines may be used to establish impairment, and Florida Administrative Code Rule 11D-8.003 establishes the procedures for the approval of such machines. State v. Muldowny, 871 So. 2d 911, 913 (Fla. 5th DCA 2004). In order for an analysis of a person's breath to be considered valid, the State must show that it was performed substantially according to the methods approved by the Department as reflected in the administrative rules and statutes. Dep't of Highway Safety & Motor Vehicles v. Russell, 793 So. 2d 1073, 1075 (Fla. 5th DCA 2001).

....

The Respondents counter the Petitioner's claims by asserting that they complied with all applicable FDLE regulations in the use and inspection of the breath testing machine. Specifically, the Respondents claim that the "breath test results are admissible if evidence of the following is provided by the Department: (1) the breath test was performed substantially in accordance with [FDLE] rules, with an approved machine and by a qualified technician; and (2) the machine has been inspected in accordance with [FDLE] rules to assure its accuracy." State v. Donaldson, 579 So. 2d 728, 729 (Fla. 1991). The Respondent refers to the Breath Alcohol Test Affidavit, the Agency Inspection Report, and the Department Inspection Report in order to demonstrate compliance with the FDLE rules and the requirements set out in Donaldson.

....

Whether or not the Petitioner's breath was tested on an approved device is at the heart of the instant case. Despite the Petitioner's best efforts, the hearing officer failed to consider the discrepancies and problems presented in the Intoxilyzer approval studies performed in April and May of 2002. Competent substantial evidence existed to demonstrate that these approval studies did not comply with the requirements of FDLE Rule 11D-8.003 and FDLE Form 34, as argued by the Petitioner and noted by the *en banc* panel in the Atkins [State v. Atkins, 16 Fla. L. Weekly Supp. 251a (Fla. Orange Cty. Ct. June 20, 2008)] case. Without independent scientific evidence demonstrating the reliability of the Intoxilyzer 8000 with software version 8100.26, the hearing officer should have excluded the Petitioner's breath test results.

Absent any controlling authority on this point from the Fifth District Court of Appeal, we find that *en banc* panel's decision in the Atkins case to be well reasoned and highly persuasive. In this specific case, the Petitioner rebutted the presumption that the Department complied with the applicable rules and regulations, and the Respondent failed to adequately meet their burden of demonstrating substantial compliance. By failing to do so, this Court finds a reversible error and grants the petition for writ of certiorari.

Our certiorari review of this decision is limited to whether the circuit court

afforded procedural due process and applied the correct law. See Dep't of Highway Safety & Motor Vehicles v. Patrick, 895 So. 2d 1131, 1133 (Fla. 5th DCA 2005); Dep't of Highway Safety & Motor Vehicles v. Perry, 751 So. 2d 1277, 1279 (Fla. 5th DCA 2000); Conahan v. Dep't of Highway Safety & Motor Vehicles, 619 So. 2d 988, 989 (Fla. 5th DCA 1993).

In a formal review hearing, the Department is only required to establish an unlawful blood-alcohol level by a preponderance of the evidence. § 322.2615(7)(a)3., Fla. Stat. (2005); Mowry, 794 So. 2d at 658. In order to be admissible, the Department must establish that the breath test administered to determine the blood-alcohol level was performed substantially according to the pertinent statutes and the methods approved by the Florida Department of Law Enforcement ("FDLE"), which are promulgated in the Florida Administrative Code. § 316.1932(1)(b)2., Fla. Stat. (2005); see also Dep't of Highway Safety & Motor Vehicles v. Alliston, 813 So. 2d 141, 144 (Fla. 2d DCA), review denied, 835 So. 2d 269 (Fla. 2002); Dep't of Highway Safety & Motor Vehicles v. Russell, 793 So. 2d 1073, 1075 (Fla. 5th DCA 2001); State v. Friedrich, 681 So. 2d 1157, 1163 (Fla. 5th DCA 1996). FDLE has adopted rules implementing the implied consent law in Chapter 11-D, Florida Administrative Code. Fla. R. Admin. Code R. 11D-8; Lanoue v. Florida Dep't of Law Enforcement, 751 So. 2d 94, 98 (Fla. 1st DCA 1999); Friedrich at 1159. Specifically, rules 11D-8.002 through 8.007 incorporate FDLE's approved techniques and methods and govern how the breath testing machines must be approved, maintained, and tested. FDLE has also promulgated forms for use in implementing the implied consent law. Fla. R. Admin. Code R. 11D-8.017.

Section 322.2615(11), Florida Statutes (2005), specifically provides that the

formal review hearing may be conducted by the hearing officer based upon a review of the documents relating to the administration of the breath test. See also Alliston. In order to meet its burden of proof, the Department introduced a Breath Alcohol Test Affidavit containing the results of Berne's breath test administered on the Intoxilyzer 8000, an Agency Inspection Report, and a Department Inspection Report.

These documents contained all of the statutorily required information necessary under section 316.1934(5), Florida Statutes (2005), to admit the affidavit containing the breath test results into evidence and to establish that the Intoxilyzer 8000 used for Berne's test was properly inspected and maintained, that it performed appropriately, and that it produced accurate and reliable test results. See, e.g., Dep't of Highway Safety & Motor Vehicles v. Dehart, 799 So. 2d 1079, 1081 (Fla. 5th DCA 2001) ("The breath test result affidavit which was submitted in this case, when combined with the agency inspection report, shows that DHSMV and the local agency substantially complied with the applicable statutes and rules relating to the inspection and maintenance of the intoxilyzer used for Dehart's breath test."); Russell, 793 So. 2d at 1076 ("When the breath test result affidavit is considered together with the agency inspection report, it is clear that both the inspection and the required maintenance of the machine were performed . . . in substantial compliance with the applicable statutes and rules.").

Once admitted, the affidavit "is presumptive proof of the results of an authorized test to determine alcohol content of the blood or breath" § 316.1934(5), Fla. Stat. (2005); see also § 316.1934(2)(c), Fla. Stat. (2005) (providing that an individual's test result of 0.08 or higher is prima facie evidence that the person was impaired); Gurry v.

Dep't of Highway Safety, 902 So. 2d 881, 884 (Fla. 5th DCA 2005); Alliston at 142; Mowry at 659; Russell at 1076. After the affidavit is admitted, the burden shifts from the Department to the party challenging the license suspension to overcome the presumption of impairment by showing that the applicable statutes and administrative rules were not substantially complied with. Gurry at 884; Alliston at 144; Russell at 1076.

Berne attempted to overcome the presumption of impairment by presenting evidence that the Intoxilyzer 8000 devices used in Florida, including the device that was used for his test, utilize the 8100.26 software, which is a version of software that he claims has “never been subjected to an approval study required under FDLE Rule 11D-8.003.” He, therefore, argues that the Intoxilyzer 8000 devices in Florida that are now using this version of software are not approved devices as required under the rule. The circuit court accepted that argument. Specifically, the circuit found that Berne “met his . . . burden of rebutting the presumption created by the Department’s documentary evidence that it substantially complied with the rules governing the approval of the breath testing instrument.” Hence, the circuit court held that “without independent scientific evidence demonstrating the reliability of the Intoxilyzer 8000 with software version 8100.26, the hearing officer should have excluded the Petitioner’s breath test results.” In holding that Intoxilyzers utilizing this version of software are not approved devices, the circuit court applied the wrong law.

Florida Administrative Code Chapter 11D-8 was amended on November 5, 2002, to specifically add the CMI, Inc. Intoxilyzer 8000 as an approved breath test instrument for evidentiary use in Florida. That chapter was again amended in 2004 to address

approval of breath testing instruments. Rule 11D-8.003, titled "Approval of Breath Test Methods and Instruments," provides in pertinent part:

(1) [FDLE] has approved the following method(s) for evidentiary breath testing: Infrared Light Test, also known as Infrared Light Absorption Test.

(2) [FDLE] approves breath test methods and new instrumentation to ensure the accuracy and reliability of breath test results. [FDLE] has approved the following breath test instrumentation for evidentiary use CMI, Inc. Intoxilyzer 8000 using software evaluated by [FDLE] in accordance with Instrument Evaluation Procedures FDLE/ATP Form 34-Rev. March 2004.

. . . .

(4) [An FDLE] inspection performed in accordance with Rule 11D-8.004, F.A.C., validates the approval, accuracy and reliability of an evidentiary breath test instrument.

(5) [FDLE] shall conduct evaluations for approval of new instrumentation under subsection (2) in accordance with Instrument Evaluation Procedures FDLE/ATP Form 34 - Rev. March 2004.

(6) The availability or approval of new instruments, software, options or modifications does not negate the approval status of previously approved instruments, software, options or modifications.

Contrary to the assertions of Berne and the holding of the circuit court, an approval study or "independent scientific evidence demonstrating the reliability of the Intoxilyzer 8000 with software version 8100.26" is not required by the rule. The rule specifically provides that the Intoxilyzer 8000 is an approved instrument if it is used with software evaluated by FDLE in accordance with Instrument Evaluation Procedures FDLE/ATP Form 34. Roger Skipper, a Department Inspector for FDLE, testified during the hearing that an approval study with the 8000.26 software was not required by the

rule and specifically testified that only an evaluation was necessary. He also testified that a proper evaluation had been conducted with the 8100.26 version of software, and the Department specifically points to the evaluation conducted on January 4, 2006, in accordance with the rule and Form 34. Thus, the Intoxilyzer 8000 is an approved device in Florida and the software 8100.26 version was evaluated. Finally, paragraph 6 specifically provides that a new software version does not negate the prior approval of an instrument.

We conclude that the documents introduced into evidence at the hearing revealed that Berne had a blood-alcohol level in excess of 0.08, which raises the presumption that Berne was driving while under the influence of alcohol to the extent that his normal faculties were impaired. Those documents, including the affidavit, were properly admitted into evidence. This shifted the burden to Berne to overcome the presumption by showing that the pertinent statutes and the methods approved by FDLE that are incorporated into the administrative rules were not substantially complied with. Instead, Berne attacked the approval of the Intoxilyzer 8000 because it incorporated a version of software that had not been approved, when all that is required under the rule is an evaluation. Berne failed to meet his burden of overcoming the presumption of impairment, and the circuit court applied the wrong law in quashing the administrative order affirming the suspension of Berne's license. Indeed, the circuit court order clearly indicates that absent an opinion from this court, the circuit court will continue to apply the wrong law in future cases of administrative license suspensions involving breath tests administered on the Intoxilyzer 8000. Accordingly, we grant the petition and quash

the order under review.¹

WRIT GRANTED; ORDER QUASHED.

EVANDER and JACOBUS, JJ., concur.

¹This court and others have rendered numerous decisions that have granted petitions for certiorari under similar circumstances. See Department of Highway Safety and Motor Vehicles v. Falcone, 983 So. 2d 755, 756 (Fla. 2d DCA 2008); Dep't of Highway Safety & Motor Vehicles v. Patrick, 895 So. 2d 1131, 1133 (Fla. 5th DCA 2005); Alliston at 143-44; Dep't of Highway Safety & Motor Vehicles v. Lazzopina, 807 So. 2d 77, 77 (Fla. 5th DCA 2001); Dep't of Highway Safety & Motor Vehicles v. Neff, 804 So. 2d 519, 520 (Fla. 5th DCA 2001); Dehart at 1080; Dep't of Highway Safety & Motor Vehicles v. Cochran, 798 So. 2d 761, 762 (Fla. 5th DCA 2001); Mowry at 658; Russell, 793 So. 2d at 1076; see also State Farm Florida Ins. Co. v. Lorenzo, 969 So. 2d 393, 398-99 (Fla. 5th DCA 2007) ("Moreover, we note the error could have a pervasive, widespread effect in other proceedings.").

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
www.wsh-law.com
Tel: (305) 854-0800
Fax: (305) 854-2323



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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

Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.

2525 Ponce de Leon Blvd., Suite 700

Coral Gables, FL 33134

www.wsh-law.com

Tel: (305) 854-0800

Fax: (305) 854-2323



Think before you print

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APR 13 2011

FDLE
Alcohol Testing Program

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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Fax: 270-685-6678
www.alcoholtest.com

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".

Toby S. Hall
President
CMI, Inc.

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Fax: 270-685-6678
www.alcoholtest.com

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

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Alcohol Testing Program

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Certificate of Calibration

This is to certify the calibration of *Intoxilyzer*® 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 _____

TECHNICIAN

EMI INC.

316 East 9th Street
Owensboro, KY 42303
USA

Part No. 550617 Rev. A

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SEP 10 2012

FDLE
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July 13, 2012

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JUL 21 2012

FDLE
Alcohol Testing Program

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "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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www.alcoholtest.com

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.

A handwritten signature in cursive script that reads "Brian Faulkner".

Brian Faulkner
Manager, Engineering

RECEIVED

MAR 26 2012

FDLE
Alcohol Testing Program

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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, appearing to read "Alan C. Triggs".

Alan C. Triggs

Corporate Counsel/Compliance Officer



Florida FDLE I8000 8100.xx

////////////////////////////////////

Changes from 8100.26 to 8100.27

(10/04/2006)

General notes on this build:

Handle breath acceptance after 3 minute sampling period expires.

Allow for remote "Upload OK" message handling.

Timestamp tests at completion of test rather than at STB push.

Increase magswipe timeout to 5 seconds to allow for new DL's with more data.

Allow transfer files while in menu mode - for future use.

////////////////////////////////////

Changes from 8100.25 to 8100.26

(12/28/2005)

General notes on this build:

Updates to record recall engine.

Remove seconds from time stamp in printout headers.

Obtain Subj Sex from the DL swipe.

Allow up to 150 (up from 32) tests of any kind to be recalled and reprinted.

Store breath results for VNM and SNL exceptions.

////////////////////////////////////

Changes from 8100.24 to 8100.25

(12/9/2005)

General notes on this build:

Ask for review after entering lot/serial numbers during inspection tests.

Change the auto-filled 3 digit targets in the remarks section to 2 digit targets (080 becomes 08).

If the pre/post diagnostics fail in the inspection test, force user acknowledgement to continue.

Restore the setup for preliminary results in the general setup menu.

Updates for No .02 agreement.

Daylight savings updates and implementation of new 2007 changes.

Improvements to file system.

Add control value and digit setting to the cylinder change record.

Extend footnotes on result tables to account for longer messages.

Support for continuing custom sequence if breath result is VNM, SNL, or NSP.

Request 3rd test if at least one valid sample was obtained and the other was VNM, SNL, or NSP.

Give display message and audible alert if 3rd test required.

Allow file transfers of files >512kB.

Store StdDevs in the inspection records.

Increment Subject record count.

Add "Time/Date Changed" flag to subject record.

Create Standard Change Record (stdrec).

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Save inspection record before printing it.
New exceptions that replace/expand "Insufficient Sample": Volume Not Met & Slope Not Level.
Allow change of Agency password from Agency Inspector menu.
Added std dev review/print for individual solutions during department inspection.
Improved interface for drop down lists.
Improved mechanism for writing changes to EEPROM.
File system improvements.
Update task stack sizes.
Update to serial bus interface.
Update mag card reader interface.
Update modem hang up routine for instrument initiated calls.
Added new remote command to tell instrument if Upload was successful.
Add user-notification while record downloading.
Updates to implementation of the test sequencer.
Added in battery support for future use.

////////////////////////////////////

Changes from 8100.20 to 8100.24
(4/1/2005)

General notes on this build:

Remove Level 4 menu.
Allow review of acetone simulator results during inspection test.
Store acetone sim results in inspection record.
Ensure DST date is calculated at startup.
Enable Factory menu encrypted passcode with "3 strikes" rule.
Save each exception code for each sample in the inspection record.
Allow correction of date/time again during subject test data entry.
Support for encrypted backdoor passcodes to menu levels that are Customer-programmable.
Improvements to file transfer/firmware update protocol.
Update encoding/printing for exceptions.
Put seconds in test time field in records.
Update numerous messages/prompts.
Update averaging for gas tank pressure.
Improve mechanism for display message when coming out of standby to ready.
Include a checksum of code flash during diagnostics.
Display warning messages during Standby/Ready for:
 Monthly AI (starting 5 days from end of month);
 AI Upload (if one is pending);
 Num Subj Tests (after 125 tests);
 Gas PSI (below 50 PSI).
Improvements to mag card reader interface.
Print header for control tests indicating the control test type.
Require AI test to be uploaded within 5 days of test or disable instrument, upload/clear to reset.
Disable instrument if last AI test is not performed once per calendar month, run

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'compliant' AI test to reset.
Disable instrument after 150 subj tests, upload/clear to reset.
Add support for programmable passcode.
Hardcode settings for date/time.
Add support for operator (user) middle initial in escape menu login and subject test.
Add software version on non-form printout headers.
New remote password change command.
Reset subj test counter and clear upload requirements when flash erased.
Removed unsupported remote commands.
Reorder inspection check flags when transmitting record.
Updates to the remote directory listing functionality.
Enhances to remote upload functionality.
Run the ending cal check and diagnostics test if a non-instrumentation exception occurs once the first breath test is reached. Any instrumentation exceptions cause test sequence to abort.
Allow VCode data entry to start in the same place every time through the review.
Allow blank entry for Operator middle init.
Do not allow operator to change date/time during subj test.
At end of data entry, show subj test # and hold for Enter key.
Added support for drop down lists for Agency and VCode.
Default subject review answer to 'Y'.
Removed extra airblank before 3rd breath sample.
Updates to inspection printout.
Always review sim results after each set, regardless of pass or fail.
Always update the Last Agency Inspection date and start the 5 day upload timer, regardless of complies or not.
Change the 'Lot #' prompts.
Improve the date calculation for the AI Due In X Days warning.
Make sure default answer to 'Repeat' is 'Y' in inspection test.
Add support for Inspection test review.
Inspection Test is savable once past the data entry for the inspector; before then, aborting does not save record.
Ask Y/N before running baro pressure check.
Update ACABA test sequence (one of the non-evidential test sequences).
Improved observation time calculation.
Default y to Print question in inspection test.
Change wet cal check time to 30 seconds
Changes to remarks section on inspection form.
Rewording/reformatting of forms.
Remove Condition Check from Inspection tests.
Add 'Num simulators used' to Department Inspection.
Make menus exclusive.
Allow user time to fix external printer problems when printing inspection tests.
Change 'Diagnostics' prompt in Inspection tests to 'Diagnostic Check'.
Change 'Invalid Sample' to 'Slope Not Met'.
Diagnostics: change 'Pass' to 'OK'.
Remove UTC/Case & Video data entry fields.

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Support for storing 2 iterations of each sim test during inspection routine.
Support for remote call back feature.
Support for transmission of new record types.

////////////////////////////////////

Changes from 8100.16 to 8100.20
(08/20/2004)

General notes on this build:

Improvements to handling of transmission of Inspection record.

Updated sequencer exception handling.

Toggle for preliminary breath results.

Handle 4 digit years.

Change deficient sample message to "Insufficient Sample".

Change no sample given message to "No Sample Provided".

Don't allow a space char as the first char during data entry.

Menu options

Level 1 menu, remove 'E'

Level 2 menu, remove change location (agency)

Level 3 setup menu, change verbiage for toggle disable byte to: "Enable Instrument" or "Disable Instrument" based on instrument state.

Level 3 setup menu, option 'L', change prompt to refer to Agency rather than location.

Please Blow prompt during breath sample changed to "Provide Sample Now".

Form atp38, change "Instrument Location" to "Instrument Registered To:".

Custom Test

Only allow a 'null' entry on Subject middle initial during all data entry questions.

No .02 agreement should look for agreement between any 2 of the 3 tests.

Improvements to inspection routine:

Improved logic for 'Are you Sure?' question.

Force volume display during min sample volume test.

Limit # of retries and extend to acetone simulator test.

Update to pressure sensor check in inspection routines.

Agency Inspection (Level 2)

Add time of inspection on form.

Acetone test is 3 samples.

Agency name is autofilled from instrument location on form.

Alc free/moa alc test is ABABA with alc free on first blow, moa on 2nd blow.

Default all Y/N data entry Q's to 'Y' (also for Department inspection).

Put operator name on left hand side of line on form atp40/41.

Department Inspection (Level 3)

Add time of inspection on form.

Acetone test is 10 samples.

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Agency name is autofilled from instrument location on form.

Min sample volume test is pass/fail same as baro monitor.

Alc free/moa alc test is ABABA with alc free on first blow, moa on 2nd blow.

Adding a 30 second purge blank after the wet bath solutions and before dry gas in auto_cal.

Update the rel std dev limit for solutions in autocal.

Improve referencing before each set of solutions in autocal.

Improve referencing after the referencing airblank in a test sequence.

Turns off source when entering disabled mode.

Improvements to review of 'observation time' data entry.

Improvements to review of 'subject driver license info' data entry.

Add data entry questions for Lot/exp date in inspection tests.

Update number of master control messages.

Add magswipe support.

Add support for reprint of inspection test.

Digital simulator support (disabled) for future use.

Increase remarks field size from 20 to 60 each.

Auto fill Complies field.

////////////////////////////////////

Changes to 8100.18

No notes available on this build. In-house, experimental build.

////////////////////////////////////

Changes from 8100.13 to 8100.16

(04/16/2004)

General notes on this build:

Update conversion utility function.

Added a global disable/enable function.

Added a modem callout demo.

Inspection Routine: first pass implementation

In subject test data entry, when changing date/time don't change location too.

Added programmable password for menu 2 only. Changable from menu 4.

Moved call to get login info to master control.

Language changes to network setup messages.

Handle the end of autocal.



316 E. 9th St.
Owensboro, KY 42303
1-866-835-0690
Fax: 270-685-6678
www.alcoholtest.com

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 $\pm 5\%$ 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", is 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", with a long horizontal flourish extending to the right.

Jon Grantham
Engineering Manager