


WINTHROP WEINSTINE
ATTORNEYS AND COUNSELORS AT LAW

July 1, 2010

William A. McNab
Direct Dial: (612) 604-6652
Direct Fax: (612) 604-6852
wmcnab@winthrop.com

VIA FACSIMILE

The Honorable Donovan W. Frank
United States District Court
District of Minnesota
316 North Robert Street
St. Paul, Minnesota 55101

The Honorable Arthur J. Boylan
United States Magistrate Judge
334 Federal Building
316 N. Robert Street
St. Paul, MN 55101

The Honorable Jerome B. Abrams
Scott County Courthouse
200 Fourth Avenue W.
Shakopee, Minnesota 55379

RE: *State of Minnesota v. CMI of Kentucky, Inc.*
Court File No. 08-CV-603 (DWF/AJB)
In re: Source Code Evidentiary Hearings in Implied Consent Matters
Consolidated File No. 70-CV-09-19459
In re: Source Code Evidentiary Hearings in Criminal Matters
Consolidated File No. 70-CR-09-19749

Dear Judges Frank, Boylan and Abrams:

As the Courts may recall, the Intoxilyzer 5000EN breath-alcohol test instrument contains two memory chips (EPROMs), which contain software that performs distinct functions within the instrument. One EPROM, often referred to as the “master,” contains software identified as “1408.62.” The other EPROM, sometimes called the “slave” or “side processor,” is loaded with different software, identified as “7502.40” or “75_0240.”

In accordance with the July 16, 2009 Consent Judgment and Permanent Injunction, CMI has been providing Authorized Minnesota litigants access to all Source Code files for the current version of Intoxilyzer 5000EN software (1408.62 and 75_0240) in both native electronic and printed, hardbound (redacted) book format.

July 1, 2010

The Honorable Donovan W. Frank

The Honorable Arthur J. Boylan

The Honorable Jerome B. Abrams

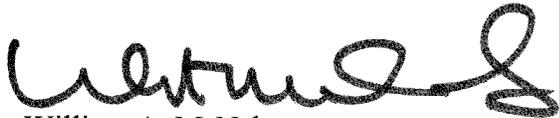
Page 2

However, it has recently come to CMI's attention that the software that is presently installed in the side-processor EPROMs in the Intoxilyzer 5000EN instruments in service in Minnesota does not identically match the 75_0240 software that was preserved at CMI at the time it was created for use in Minnesota.

At present, neither CMI nor the State is certain of the cause of this difference, or of its impact, if any, on the Source Code review currently underway. I assure the Courts that CMI and the State are working cooperatively and diligently to resolve this issue as quickly as possible.

Very truly yours,

WINTHROP & WEINSTINE, P.A.

A handwritten signature in black ink, appearing to read 'William A. McNab', written in a cursive style.

William A. McNab

WAM/lm

cc: Counsel of Record/Liaison Counsel (via e-mail)

5329459v1
13956.2