

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

State of Minnesota,
by Michael Campion, its
Commissioner of Public Safety,

Civil Case No. 08-603 (DWF/AJB)

Plaintiff,

and

Robert J. Bergstrom, Craig A.
Zenobian, Shame M. Steffensen,
and Christopher D. Jacobsen,
Plaintiff- Intervenors,

vs.

CMI of Kentucky, Inc.,
a Kentucky corporation,
Defendant.

**AFFIDAVIT OF MICHAEL CAMPION
IN SUPPORT OF PLAINTIFF’S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND AN ORDER FOR
SPECIFIC PERFORMANCE OR
PERMANENT INJUNCTION, OR IN
THE ALTERNATIVE FOR A
PRELIMINARY INJUNCTION**

COUNTY OF RAMSEY)
)ss.
STATE OF MINNESOTA)

Michael Campion, being first duly sworn, deposes and states that:

1. I am the Commissioner of Public Safety and submit this affidavit in support of Plaintiff’s Motion for Partial Summary Judgment and an Order for Specific Performance or Permanent Injunction, or in the alternative for a Preliminary Injunction.

2. I was appointed Acting Commissioner of the Minnesota Department of Public Safety (“DPS”) by Governor Tim Pawlenty on April 16, 2004, and then appointed Permanent Commissioner on June 17, 2004. Prior to this appointment, I served as Superintendent of the Minnesota Bureau of Criminal Apprehension (“BCA”) for four years and prior to that worked in a variety of investigative, management and legislative liaison positions for 17 years.

3. In my capacity as Commissioner of Public Safety, part of my responsibilities include overseeing enforcement of Minnesota's driving while impaired ("DWI") and implied consent laws. More than 38,000 drivers are arrested for DWI every year in Minnesota. In the last three years in Minnesota, there have been 540 traffic deaths and more than 1,300 serious injuries from alcohol-related crashes. Also in the past three years, 40% of drivers arrested for DWI were repeat drunk drivers. Over 500,000 Minnesotans have a DWI.

4. Minnesota currently uses the Intoxilyzer 5000EN to conduct breath alcohol tests on individuals arrested for DWI. The Intoxilyzer 5000EN is manufactured by CMI of Kentucky, Inc. Previous versions of the Intoxilyzer instrument have been used in Minnesota since approximately 1984.

5. Attached as Exhibit A are true and correct copies of two research compilations done addressing DWI recidivism rates and the importance of swift consequences for DWI offenders. Of the three forms of DWI chemical testing available, breath testing is the most common form of testing used by law enforcement agencies in Minnesota. Upon receiving a test result, Minnesota law requires law enforcement officers to issue an implied consent revocation; and impound vehicle license plates or forfeit a vehicle where appropriate.

6. Attached as Exhibit B is a true and correct copy of my letter to CMI dated November 30, 2007, requesting that CMI produce the Source Code for the Intoxilyzer 5000EN. Attached as Exhibit C are true and correct copies of letters that I received from CMI dated December 21, 2007, and January 15, 2008, in response to my letter.

7. CMI's failure to produce the Source Code has diminished enforcement of Minnesota's DWI and implied consent laws.

Further your affiant sayeth not.

s/ Michael Campion
MICHAEL CAMPION

Subscribed and sworn to before me
this 16th day of April, 2009.

s/ Tamara A. Bohmert
Notary Public