



January 29, 2010

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

VIA CM/ECF AND U.S. MAIL

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)

Dear Judges Frank and Abrams:

This firm represents CMI of Kentucky, Inc. I write to respond, briefly, to correspondence addressed to the Courts by the Source Code Coalition ("Coalition").

On June 1, 2009, CMI voluntarily entered into a settlement and stipulated Consent Judgment and Permanent Injunction which, if adopted by the federal Court, would make CMI's proprietary Source Code available to Authorized Minnesota litigants in printed, hardbound form in Minnesota, and in native, electronic form in Kentucky. In order to provide for meaningful review, CMI committed to making a great deal of other materials and information, in addition to the Source Code, available in Kentucky. On July 16, 2009, Judge Frank entered the Consent Judgment and issued the Permanent Injunction after concluding that it gave Minnesota litigants "reasonable, and, in fact, unprecedented access to the Source Code."

CMI has been in compliance with the Permanent Injunction since it was issued. It has provided the printed version of the Source Code to several Authorized Minnesota litigants (including the Coalition), and the native electronic format has been available since July 2009. Indeed, counsel for one Authorized Minnesota litigant, and his expert, each traveled to Kentucky and reviewed the Source Code and other materials and information in August 2009.

In October 2009, the Coalition informed CMI of its intent to perform an on-site Source Code Review. CMI was ready, willing and able to proceed (and remains so to this day). However, the Coalition subsequently demanded access to information and materials not covered by the

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Permanent Injunction, and indicated that its consultants planned to handle the Source Code in a manner that is expressly prohibited by the Permanent Injunction. CMI objected to those demands.


As required by the Permanent Injunction, CMI attempted in good faith to resolve these issues, and it offered the Coalition's consultants a level of access that goes far beyond what any Minnesota litigant ever asked the State to produce in his or her underlying DUI or Implied Consent revocation case, and far beyond what Judge Frank deemed reasonable in the Permanent Injunction. Accordingly, CMI has fully satisfied its obligations under the Permanent Injunction.

The complete electronic Source Code has been available since July. Still, to this day not one of the Coalition's consultants has begun analyzing it. Remarkably, the Coalition claims that its consultants have spent several months and \$150,000 *not doing* Source Code review, but that *not* starting the review while demanding ever more information will somehow *expedite* the process. Even more remarkably, the Source Code Coalition does not claim that the additional information and materials it demands are necessary for meaningful source code review.

CMI has honored, and will continue to honor, its obligations under the Permanent Injunction. Moreover, while it is not a party to the consolidated state court cases, it has greatly appreciated the opportunity to participate in Judge Abram's status and case management conferences. As I have previously indicated to both Courts, CMI remains ready to promptly proceed with a legitimate Source Code review process in order to put this issue to rest once and for all.

Very truly yours,

WINTHROP & WEINSTINE, P.A.



William A. McNab

WAM/lm

Cc: Counsel of Record (via e-mail)

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