

**IN THE CIRCUIT COURT OF THE TWELFTH JUDICIAL CIRCUIT
IN AND FOR SARASOTA COUNTY, FLORIDA**

**CMI, INC. OF KENTUCKY,
Petitioner,**

v.

**Case Number 2008 CA 005961 NC
Circuit Civil - Division C**

**KYLE R. WOODS, *et al*, and
THE STATE OF FLORIDA,
Respondents.**

COURT ORDER DENYING AMENDED PETITION FOR WRIT OF CERTIORARI

THIS CASE came before the Court pursuant to the Petitioner's Amended Petition for Writ of Certiorari, filed on April 25, 2008, pursuant to Fla. R. Civ. P. 9.100. The Court has carefully reviewed the record and is otherwise duly advised in the premises.

The dispute in this case centers on whether the Petitioner should be required to produce source codes for certain versions of the Intoxilyzer machines which it manufactures. The trial court issued an Amended Order on March 17, 2008, superseding its prior February 7, 2008, Order. In its Amended Order, the trial court found, *inter alia*, that the Defendants established materiality and a reasonable necessity for production of the source code: "The defendants have established through testimony that the Source Code is reasonably necessary to determine whether the Intoxilyzer 8000 contains the software approved by the State of Florida, whether it is functioning as per the approved Source Code, and whether any alternations have affected its operation and reliability."

Certiorari will lie to quash an order granting discovery when the order (1) departs from the essential requirements of the law, (2) resulting in material injury that (3) cannot be corrected

on direct appeal. *See McGarrah v. Bayfront Medical Center, Inc.*, 889 So. 2d 923, 925 (Fla. 2d DCA 2004). Petitioner alleges that the trial court departed from the essential requirements of the law by finding that production of the source code for certain Intoxilyzer machines was reasonably necessary. Petitioner also contends that the trial court erroneously made its determination of reasonable necessity based on whether obtaining the source code would enable the Defendants to understand the Intoxilyzer. Petitioner argues that the correct standard is whether the source code is reasonably necessary to the Respondent's case.

The trial court did not depart from the essential requirements of the law in finding that production of the source code is material and reasonably necessary to the Defendant's case. The trial court's March 17, 2008, Order is included in the Petitioner's Appendix to the Amended Petition. The March 17, 2008, Order notes that the Petitioner has advised the trial court that it will comply with the subpoena duces tecum for production of the source codes, provided that a protective order and a non-disclosure agreement are entered. Pursuant to the Order, the source codes to be produced are as follows: the Intoxilyzer 8000, versions 8100.24, 8100.25, 8100.26 and 8100.27. Petitioner asks this Court to reverse the trial court's decisions on these same models. The Petitioner fails to demonstrate material injury resulting in irreparable harm if it has already agreed to disclose the source code for these exact versions of the Intoxilyzer provided that certain protections are in place.

Accordingly, it is **ORDERED AND ADJUDGED** that:

The Petitioner's Amended Petition for Writ of Certiorari is *denied*.

DONE AND ORDERED in Chambers in Sarasota County, Florida, this May 20, 2008.

ORIGINAL SIGNED

MAY 20 2008

DONNA PADAR BERLIN
CIRCUIT JUDGE

DONNA PADAR BERLIN
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 20, 2008, a true and conformed copy of the foregoing has been furnished as follows to the following parties by US MAIL:

JARROD MALONE, Esquire
Abel Band, Chartered
Post Office Box 49948
Sarasota, Florida 34240-6948

CLIFF RAMEY, Esquire
Office of the State Attorney
2071 Ringling Boulevard
Sarasota, Florida 34236

ROBERT HARRISON, Esquire
825 South Tamiami Trail, Suite 2
Venice, Florida 34285

The Honorable David L. Denkin

/s/ PAMELA McCAGUE

PAMELA S. McCAGUE
Judicial Assistant to Judge Berlin