

06-1073-CD

Russell G. Woods vs Comm of PA

2006-1073-CD

Russell Woods vs Comm of PA

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Russell George Woods,
Plaintiff

*

-VS-

Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Driver Licensing,
Defendant

*

*

*

* Docket No. 2006-1073-CD

Driver License No. 22464739

Type of Pleading:
NOTICE OF APPEAL OF DRIVER
LICENSE SUSPENSION AND REQUEST
FOR SUPERSEDEAS

Filed on behalf of:
PLAINTIFF: Russell George Woods

Counsel of record for
this party:

Dwight L. Koerber, Jr., Esq.
PA I.D. No. 16332

110 North Second Street
P. O. Box 1320
Clearfield, PA 16830
(814) 765-9611

FILED Atty pd. 85.00
07-24-06
JUL 06 2006 4CC Atty
W

William A. Shaw
Prothonotary/Clerk of Courts

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION**

Russell George Woods,
Plaintiff

*

-VS-

Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Driver Licensing,
Defendant

* Docket No. 2006- CD

*

*

Driver License No. 22464739

**NOTICE OF APPEAL OF DRIVER LICENSE SUSPENSION
AND REQUEST FOR SUPERSEDEAS**

COMES NOW, Russell George Woods, by and through his attorney, Dwight L. Koerber, Jr., Esquire, and files the within pleading directed to the June 21, 2006 Notice of the Department of Transportation, which states that Appellant's privileges to drive a commercial vehicle is being disqualified for a period of six (6) months.

1. Appellant is Russell George Woods (referred to hereinafter as "Woods" or "Appellant"), who resides at 650 Woods Hollow Road, West Decatur, PA, 16878, such address and residency being in Clearfield County, Pennsylvania.

2. Appellee is the Commonwealth of Pennsylvania, Department of Transportation, Bureau of Driver Licensing (referred to hereinafter as "DOT" or "Appellee"), which has an address of Office of Chief Counsel, Third Floor, Riverfront Office Center, Harrisburg, PA, 17104.

3. Woods holds a commercial driver's license from the Commonwealth of Pennsylvania, identified as driver's license number 22464739.

4. Woods is a truck driver currently employed by Kephart Trucking Co., of P. O. Box 386, Bigler, PA, 16825.

5. On June 21, 2006, DOT served notice upon Woods, informing him that effective July 26, 2006, at 12:01 a.m., he was disqualified to operate a commercial motor vehicle for a period of six (6) months.

6. Attached hereto as Appendix A is a true and correct copy of the June 21, 2006 Notice of Disqualification.

7. As shown by the Notice of Disqualification, the action is taken as a result of Appellant allegedly violating Section 1606A of the Vehicle Code by driving a commercial motor vehicle without a CDL on May 31, 2006.

8. As a matter of fact, the events that occurred are that Appellant does hold a CDL which was valid on May 31, 2006. The CDL in question, however, did not have a "hazardous materials" designation on it.

9. The date upon which Appellant was alleged to have been adjudicated as violating Section 1606A of the Vehicle Code was set as shown on the June 21, 2006 Notice as being June 9, 2006. That date is not correct, as no adjudication of any nature has occurred.

10. The matter that occurred on or about June 9, 2006 is that Appellant's employer sent in the fine pertaining to the underlying citation, but Appellant never at any time signed the guilty plea pertaining to such violation.

11. Appellant is now in the process of filing Notice of Appeal of the alleged adjudication that occurred on June 9, 2006, involving the alleged violation of May 31, 2006, and he anticipates being adjudicated as not guilty of the underlying offense. By filing a Notice of Appeal, Appellant is entitled to a hearing de novo before the Court of Common Pleas of Monroe County.

12. Attached hereto as Appendix B is a true and correct copy of the Notice of Appeal that Appellant has filed with Monroe County.

13. In addition to stating that he has never been adjudicated as being guilty of operating a commercial vehicle without a CDL, Appellant is also prepared to demonstrate in a hearing on the merits of his underlying conviction that he is not guilty of illegally operating a commercial vehicle as alleged.

14. Appellant requests that a hearing on the merits of the present suspension notice, as covered by the June 21, 2006 Notice served by DOT, not be held until a date after there has been a final adjudication on the merits of the underlying incident which occurred on May 31, 2006.

15. With there being no adjudication and in fact with there being no guilty plea having been properly entered against him, Appellant has not been convicted of the May 31, 2006 incident which underlies the issuance of the June 21, 2006 Notice of Disqualification.

WHEREFORE, Russell George Woods requests that his appeal be granted and that the suspension/disqualification of his commercial driving privileges be vacated and

that the June 21, 2006 Notice, attached as Appendix A to this Notice of Appeal, be reversed and set aside.

REQUEST FOR SUPERSEDEAS

16. Section 1550(b)(2) of the Vehicle Code, 75 Pa. C.S.A. §1550 (b)(2), provides that a supersedeas may be granted by the Court of Common Pleas on an ex parte basis, upon a showing of the reasonable likelihood of success of prosecution of the appeal.

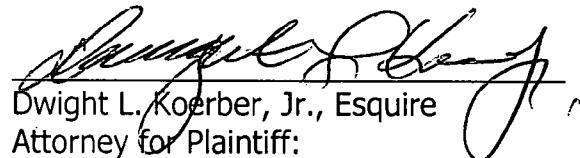
17. Appellant submits that there is a probability of succeeding in the merits of the appeal herein, inasmuch as he has filed a Notice of Appeal effectively staying the alleged adjudication that occurred on June 9, 2006 finding him guilty of Section 1606A of the Vehicle Code. Furthermore, Appellant submits that he has at all times held a valid CDL and that he is not guilty of knowingly driving without a CDL as alleged in the May 31, 2006 incident.

18. Appellant would experience irreparable harm if the supersedeas request is not granted, as he would lose his CDL driving privileges before he has a hearing on the merits of the underlying case. Loss of his CDL would deprive Appellant of the only employable skills he has and would produce economic ruination of himself and his family.

WHEREFORE, Woods prays that a supersedeas be granted, so that the Notice issued on June 21, 2006, attached hereto as Appendix A, does not result in a disqualification for 6 months effective July 26, 2006, that the June 21, 2006 Notice of

the Department of Transportation be vacated and set aside, and that the proposed Order, attached hereto, be entered.

Respectfully submitted,



Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff:
Russell George Woods

VERIFICATION

I certify that the statements made in the foregoing document are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.

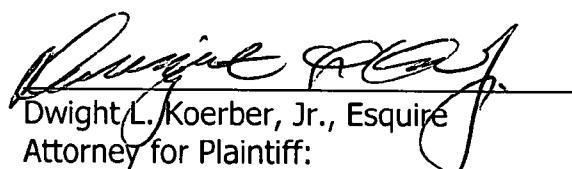
Russell George Woods
Russell George Woods

DATED: 7-6-06

CERTIFICATE OF SERVICE

I certify that on this 6th day of July 2006, a copy of the foregoing pleading was served by United States First Class Mail upon the following:

Commonwealth of Pennsylvania
Department of Transportation
Bureau of Driver Licensing
Office of Chief Counsel, Third Floor,
Riverfront Office Center,
Harrisburg, PA, 17104



Dwight L. Koerber, Jr., Esquire
Attorney for Plaintiff:
Russell George Woods

APPENDIX A

Attached hereto as Appendix A is a copy of the Notice of Disqualification which alleging that Appellant violated Section 1606A of the Vehicle Code by driving a commercial motor vehicle without a CDL on May 31, 2006.

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
JUNE 21, 2006

RUSSELL GEORGE WOODS
650 WOODS HOLLOW ROAD
WEST DECATUR PA 16878

WID # 061656186817331 002
PROCESSING DATE 06/14/2006
DRIVER LICENSE # 22464739
DATE OF BIRTH 07/29/1969

Dear Motorist:

As a result of your conviction, entry into a pre-adjudication program, or administrative adjudication on 06/09/2006 of violating Section 1606A of the Vehicle Code, DRIVING CMV WITHOUT CDL on 05/31/2006 , your privilege to drive a commercial motor vehicle is being disqualified for a period of 6 MONTH(S) as mandated by Section 1611F of the Vehicle Code.

The effective date of disqualification is 07/26/2006, 12:01 a.m.

In order to comply with this sanction you are required to return any current driver's license, learner's permit and/or temporary driver's license (camera card) in your possession no later than the effective date listed. If you cannot comply with the requirements stated above, you are required to submit a DL16LC Form or a sworn affidavit stating that you are aware of the sanction against your driving privilege. Failure to comply with this notice shall result in this Bureau referring this matter to the Pennsylvania State Police for prosecution under SECTION 1571(a)(4) of the Vehicle Code.

Although the law mandates that your driving privilege is under suspension even if you do not surrender your license, Credit will not begin until all current driver's license product(s), the DL16LC Form, or a letter acknowledging your sanction is received in this Bureau.

WHEN THE DEPARTMENT RECEIVES YOUR LICENSE OR
ACKNOWLEDGEMENT, WE WILL SEND YOU A RECEIPT. IF YOU DO NOT
RECEIVE THIS RECEIPT WITHIN 15 DAYS CONTACT THE DEPARTMENT
IMMEDIATELY. OTHERWISE, YOU WILL NOT BE GIVEN CREDIT TOWARD
SERVING THIS SANCTION.

061656186817331

Please see the enclosed application for restoration fee information.

While your commercial driving privilege is disqualified, the Vehicle Code permits a driver to obtain a noncommercial Class C or M license, if the driver possesses the motorcycle qualification, to drive noncommercial motor vehicles. If you wish to obtain this license, please complete the enclosed application as instructed and return it to the Department.

Please be aware that if you elect to obtain this noncommercial Class C or M license, you are still prohibited from operating a commercial motor vehicle. If you do so, you are subject to additional penalties, including possible lifetime disqualification of your commercial driving privilege.

You have the right to appeal the Department's action to the Court of Common Pleas (Civil Division) within 30 days of the mail date (JUNE 21, 2006) of this notice. You must still send in your license before the effective date of disqualification unless you appear in person before a Judge and receive an order permitting you to continue to drive. PLEASE NOTE that this Civil Appeal is in addition to any appeal you have to file from the criminal conviction.

AFTER THE APPEAL HAS BEEN FILED IN THE COUNTY COURT, A TIME-STAMPED CERTIFIED COPY OF THE APPEAL MUST BE SENT BY CERTIFIED MAIL TO:

**PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
OFFICE OF CHIEF COUNSEL
THIRD FLOOR, RIVERFRONT OFFICE CENTER
HARRISBURG, PA. 17104**

Sincerely,



Janet L. Dolan, Director
Bureau of Driver Licensing

APPENDIX B

Attached hereto as Appendix B is a true and correct copy of the Notice of Appeal that Appellant has filed with Monroe County.



IN THE COURT OF COMMON PLEAS, COUNTY OF Monroe

Notice of Appeal from Summary Criminal Conviction

65 SA 2006

Name and Address of Defendant:

Russell George Woods
650 Woods Hollow Road
West Decatur, PA ZIP 16878

Date: 06/30/06

Issuing Authority Docket No. TR-0002449-06

Citation No. NO207332-6

Magisterial District No. 43-3-04

Appeal from sentence of D.J. York

Date of Sentence: 06/09/06 Offense(s) of which convicted § 75 § 1606 § 8A

Name and mailing address of affiant as shown on citation

or complaint Albert S. Turano
PA State Police, HC1, Box 121
Swiftwater, PA 18370

If sentence includes fine and costs, amount of which paid:

\$581.50

Type or amount of bail furnished to issuing authority, if any:

Name and address of issuing authority:

The Honorable Debby A. York
Chestnut Hill Municipal Building
Route 715
P.O. Box 218
Brodheadsville, PA ZIP 18322
Phone 570-992-4919

Name and address of Attorney for Defendant
ATTORNEY IDENTIFICATION NO.

16332

(signature) *Dwight L. Koerber, Jr.*
(print name) Dwight L. Koerber, Jr., Esquire
(street) P.O. Box 1320
110 N. Second St. Phone 814-765-9611
(address) Clearfield, PA ZIP 16830

NOTICE TO DEFENDANT:

If your appeal is from a motor vehicle conviction other than parking, have the clerk of courts certify this copy and mail to the following address:

Penn. Dept. of Transportation
PO Box 60037
Harrisburg, PA 17106

I hereby certify that an appeal has been filed in the above captioned matter.

CLERK OF COURTS
JUL 6 2006 JUL - 3 P 2: 27
MONROE COUNTY, PA.

Jeanette Ward
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

Russell George Woods,
Plaintiff

*

-vs-

Commonwealth of Pennsylvania,
Department of Transportation,
Bureau of Driver Licensing,
Defendant

*

*

*

* Docket No. 2006-1073-CD

Driver License No. 22464739

FILED 4CC
02:43 PM Atty
JUL 06 2006
Koerber
William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 6th day of July 2006, upon consideration of the Notice of Appeal of Driver's License Suspension and Request for Supersedeas filed on behalf of Russell George Woods, IT IS THE ORDER AND DECREE OF THIS COURT that a supersedeas is hereby granted and the June 21, 2006 Notice of the Bureau of Driver Licensing WID #061656186817331 002 disqualifying Russell George Woods from driving a commercial motor vehicle for 6 months is hereby vacated. The Court Administrator of Clearfield County is directed to schedule this case for trial at the next available date when driver suspension appeals are heard.

Counsel for Russell George Woods is directed to serve forthwith a copy of this Order and the Notice of Appeal to the Pennsylvania Department of Transportation, Office of Chief Counsel, Third Floor, Riverfront Office Center, Harrisburg, PA 17104.

BY THE COURT:


Paul E. Cheaney
J.

FILED

JUL 06 2006

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 7/6/06

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s) Plaintiff(s) Attorney Other

Defendant(s) Defendant(s) Attorney

Special Instructions:

FILED

FEB 18 2009

04:66 (61)

William A. Shaw
Prothonotary/Clerk of Courts

LAW OFFICES

OF

DWIGHT L. KOERBER, JR.

Attorney at Law

110 North Second Street

P. O. Box 1320

Clearfield, PA 16830

February 17, 2009

Dwight L. Koerber, Jr., Esquire
Email: dkoerber@atlanticbb.net
Telephone (814) 765-9611

Eric E. Cummings, Esquire
Email: eecummings@atlanticbb.net
Facsimile (814) 765-9503

The Honorable Fredric J. Ammerman
COURT OF COMMON PLEAS OF CLEARFIELD COUNTY
CLEARFIELD COUNTY COURTHOUSE
230 East Market Street
Clearfield, PA 16830

Via Hand Delivery

**Re: Russell George Woods v. Commonwealth of Pennsylvania,
Department of Transportation, Bureau of Driver Licensing
Docket No. 2006-1073-CD**

Dear Judge Ammerman:

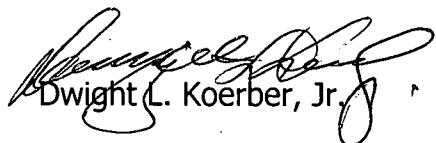
I am enclosing herewith a copy of the Order entered by the Court of Common Pleas of Monroe County dismissing the citation that had been entered against Russell Woods, such citation being the basis of the Notice of Revocation that the Department of Transportation had issued that we addressed in the Notice of Appeal filed in Clearfield County, where we sought both to have the Notice set aside and to obtain a supersedeas while the underlying proceeding was being addressed.

After looking at my file, I can see from my file that I had a discussion with the Court Administrator on September 11, 2007 outlining the events that had occurred. From that discussion I was under the impression that the case would be scheduled for hearing and at that point the Department of Transportation would present the required information to properly dispose of the case.

To fill in the "missing blanks", I am attaching hereto a copy of my letter to the Chief Counsel of the Department of Transportation and a copy of the reply I had received.

If anything further is needed on this matter, I would be pleased to forward it to the Court or if necessary file a motion.

Very truly yours,



Dwight L. Koerber, Jr.

DLK/sah

Enclosure: Copies of Orders

Copy of February 13, 2007 Correspondence to DOT

Copy of May 21, 2007 Correspondence from DOT

Copy of April 11, 2007 Correspondence to DOT

COPY

**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

COMMONWEALTH OF PENNSYLVANIA : NO. 76 SA 2006

**KEPHART TRUCKING COMPANY,
Defendant**

ORDER OF COURT

AND NOW, this 5th day of February, 2007, upon consideration of the Commonwealth's Motion, the charge of violation of Hazar Mat Transpor Regs, Section 8306(A) of the Motor Vehicle Code in above-captioned matter is DISMISSED.

BY THE COURT:


Linda Wallach Miller, Judge

cc: M. Matthews, Esq. (ADA)
Dwight L. Koerber, Jr., Esq.
P.O. Box 1320
110 N. Second Street
Clearfield, PA 16830
Hon. Debby A. York, District Court

CLERK OF COURT
JULY 5 2004
MONROE COUNTY, PA

COPY

**COURT OF COMMON PLEAS OF MONROE COUNTY
FORTY-THIRD JUDICIAL DISTRICT
COMMONWEALTH OF PENNSYLVANIA**

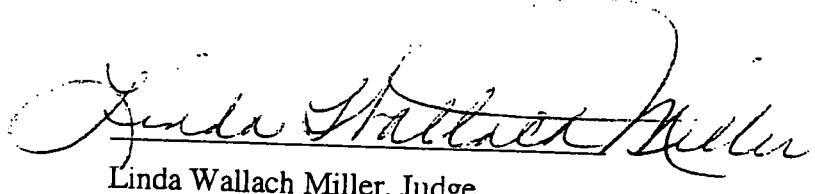
COMMONWEALTH OF PENNSYLVANIA : NO. 65 SA 2006

v. :
: :
: :
: :
RUSSELL GEORGE WOODS, :
Defendant :
: :
: :
: :

ORDER OF COURT

AND NOW, this 5th day of February, 2007, upon consideration of the Commonwealth's Motion, the charge of violation of Requirement for Commercial Driver's License, Section 1606(A) of the Motor Vehicle Code in above-captioned matter is DISMISSED.

BY THE COURT:



Linda Wallach Miller
Linda Wallach Miller, Judge

cc: M. Matthews, Esq. (ADA)
Dwight L. Koerber, Jr., Esq.
P.O. Box 1320
110 N. Second Street
Clearfield, PA 16830
Hon. Debby A. York, District Court

CLERK OF COURT
JAN LEE - 5. P 12:04
MONROE COUNTY, PA

LAW OFFICES
OF
DWIGHT L. KOERBER, JR.

Dwight L. Koerber, Jr.
Telephone (814) 765-9611

Attorney at Law
110 North Second Street
P. O. Box 1320
Clearfield, PA 16830

Facsimile (814) 765-9503
Email: dkoerber@atlanticbb.net

February 13, 2007

Andrew S. Gordon, Chief Counsel
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
Office of Chief Counsel
P. O. Box 8212
Harrisburg, PA 17105-8212

Re: Russell George Woods
Drivers License No: 22464739
Date of Birth: 07/29/1969

Dear Chief Counsel:

I represent Russell George Woods and am writing in conjunction with an ongoing legal proceeding involving his CDL.

As background information, Mr. Woods was issued a six (6) month suspension notice of his CDL driving privileges, for allegedly transporting hazardous materials. Later investigation confirmed that Mr. Woods did not violate the Federal Motor Carriers Safety Regulations in transporting the extremely small amount of product that he did, as diethylenetriamine in minimal levels transported on the tractor trailer unit does not require special CDL endorsement. In order to correct the action that had been taken here, I am enclosing herewith copies of the following documents:

- (1) Copy of Order from Judge Miller dated September 20, 2006, remanding the case, thereby reopening the guilty verdict.
- (2) Copy of Motion that dated February 2, 2007, filed by the Assistant District Attorney from Monroe County, seeking to have the prosecution against Mr. Woods dismissed.
- (3) Copy of Order dated February 5, 2007, by Judge Miller, dismissing the prosecution in this matter.

Now pending before the Court of Common Pleas of Clearfield County is a Notice of Appeal including a Petition for Supersedeas. I would take the position that that proceeding is now moot, in view of the dismissal of the underlying charges that had

Andrew S. Gordon, Chief Counsel
Page 2
February 13, 2007

given rise to the suspension notice. Accordingly, I would respectfully request that your office kindly send notice to Clearfield County confirming that you are not opposing the Notice of Appeal.

So that Russell George Woods driving record is corrected to show that he does not have a blotch on it for improperly transporting hazardous materials, I would ask that the entry that had been given in this case, arising out of the transportation services rendered on May 31, 2006 be removed from Mr. Woods record.

If anything further is required on my part to move forward as requested herein, please advise what it is. Otherwise, I would ask that your office kindly move forward to implement the procedures necessary to give effect to Judge Miller's Order dated February 5, 2007.

Very truly yours,



Dwight L. Koerber, Jr.

DLK/bdt
Enclosures: Listed Above
Cc: Mr. Jack Yingling
Mr. Russell George Woods



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
BUREAU OF DRIVER LICENSING
HARRISBURG, PENNSYLVANIA
17104-2516

COPY

May 21, 2007

Dwight L. Koerber Jr.
Attorney at Law
110 North Second Street
Post Office Box 1320
Clearfield, PA 16830

RE: Russell G. Woods

Dear Mr. Koerber:

This is in response to your recent correspondence regarding your client's driving privilege.

A review of your client's driving record indicates that the violation of Section 1611 of the Vehicle Code was deleted on March 8, 2007.

However, as a result of the Motor Carrier Safety Improvement Act, PennDOT was required by law to process and to maintain the non-sanctioned speeding violation on your client's driving record.

If you have any questions regarding this matter, please call my office at (717) 787-2977 or Darlene Savercool at (717) 787-4219.

Sincerely,

A handwritten signature in cursive ink that reads "Janet L. Dolan".

Janet L. Dolan, Director
Bureau of Driver Licensing

Driver Number 22464739

**LAW OFFICES
OF
DWIGHT L. KOERBER, JR.**

Attorney at Law

110 North Second Street

P. O. Box 1320

Clearfield, PA 16830

*Dwight L. Koerber, Jr.
Telephone (814) 765-9611*

April 11, 2007

COPY

Facsimile (814) 765-9503

Email: dkoerber@atlanticbb.net

Andrew S. Gordon, Chief Counsel
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION
Office of Chief Counsel
P. O. Box 8212
Harrisburg, PA 17105-8212

**Re: Russell George Woods
Drivers License No: 22464739
Date of Birth: 07/29/1969**

Dear Mr. Gordon:

I represent Russell George Woods, and am writing to you because his current driving record as reported in your computer is incorrect.

For ease in reference, I am attaching a copy of Mr. Woods' current MVR. I have circled the second page pertaining to conviction date of December 1, 2005. That should be deleted from Mr. Woods' driving record. To confirm that I am attaching hereto a copy of my letter dated February 13, 2007, when I furnished you with a copy of the Order entered on February 5, 2007, finding Mr. Woods not guilty of that charge.

Please make the correction on Mr. Woods' MVR. Please send confirmation to me that the correction has been made.

Very truly yours,


Dwight L. Koerber, Jr.

DLK/bdt

Enclosures: Copy of MVR

Copy of Order

Cc: Mr. Russell George Woods

Mr. Jeff Kovacik

Mr. Jack Yingling

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

RUSSELL GEORGE WOODS,
Plaintiff

vs

COMMONWEALTH OF PENNSYLVANIA,
DEPARTMENT OF TRANSPORTATION,
BUREAU OF DRIVER LICENSING,
Defendant

* NO. 06-1073-CD

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FILED

FEB 18 2009

William A. Shaw
Prothonotary/Clerk of Courts

ORDER

AND NOW, this 18th day of February, 2009, in regard to the above-captioned appeal of driver's license suspension, the Court notes that it has now received a copy of an Order from the Court of Common Pleas of Monroe County dated February 5, 2007 wherein the underlying Summary charge of Requirement for Commercial Driver's License under § 1606(A) of the Motor Vehicle Code being filed against the Appellant Russell George Woods was dismissed; it is the ORDER of this Court that the Appeal of Driver's License Suspension be and is hereby GRANTED. It is the ORDER of this Court that the Commonwealth remove/lift any commercial driver's license suspension against the Appellant based upon the dismissed Summary offense filed in Monroe County.

BY THE COURT,


FREDRIC J. AMMERMAN
President Judge

DATE: 2-18-09

FILED
FEB 18 1968