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Lehigh Falls Fishing Oub v. Andrejewski, 735 A.2d 718 (Pa. Super. Ct. 1999)

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the department's decision. Both sides presented testimony to support their point. The court found substantial evidence that the spring flowed in sufficient quantity and the ground was sufficiently saturated that the water, if left undiverted, would make its way to McKay Creek. Thus, Norden was required to obtain a permit to use water from the spring.

Melinda B. Barton

PENNSYLVANIA

Lehigh Falls Fishing Club v. Andrejewski, 735 A.2d 718 (Pa. Super. Ct. 1999) (holding that the Lehigh River in Pennsylvania is navigable, therefore fishing club cannot claim a section of the river as private property).

The Lehigh River transverses land owned by the Lehigh Falls Fishing Club. In 1995, John Andrejewski began fishing on the section of the Lehigh River that flows through the Fishing Club's private land. Andrejewski accessed this section of the river by crossing over land co-owned by his father. The Fishing Club attempted to eject Andrejewski, claiming that the waters bisecting its land were private. Andrejewski refused to leave, claiming he had a right to fish there because the waters in question were navigable.

In Pennsylvania, the Commonwealth owns all navigable waters, and navigable waters are thus open to the public. The Fishing Club sought a declaration that the Lehigh River was not navigable, and therefore was private property. The trial court determined that the Lehigh River was navigable. The Fishing Club then appealed to the Superior Court of Pennsylvania.

The single issue on appeal was whether the Lehigh River was navigable. The test for a river's navigability was whether a river was navigable in fact. The Fishing Club submitted detailed evidence concerning the depth and navigability of its particular section of the river. However, nearly century old judicial decisions and legislative declarations from the 19th Century indicated that the river was previously considered navigable. The court decided to follow this precedent for determining navigability in this case. Also, the court concluded that rivers must be considered navigable as a whole. The court refused to do a piecemeal analysis to determine whether a particular section of the Lehigh River was navigable or not. Subsequently, the court concluded the Lehigh River was navigable, and affirmed the trial court's decision.

Kirk Waible