

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA**

JOHN R. MATTER, and	:	
JANE A. MATTER, his wife,	:	
Plaintiffs	:	
	:	
v.	:	No. 97-01,748
	:	
HRI, INC.; MILESTONE MATERIAL,	:	
INC. and GENERAL CRUSHED	:	
STONE, INC.,	:	
Defendants	:	

**ORDER**

AND NOW, this \_\_\_\_\_ day of June, 1999, after argument and extensive consideration by the court, the defendants' Motion for Summary Judgment is denied. In support of this order the court notes the following:

- (1) **Contract Claim:** The defendant argues that this claim is barred by the statute of limitations. In contract actions, the statute of limitations begins when a party's duty to perform arises.

There is a factual dispute over when the cause of action arose. Plaintiffs claim the agreement bound the defendants to repair any damage they had done after being notified. Since no time was specified to complete the repairs, the contract must be construed as allowing a reasonable period of time. The plaintiffs have accumulated sufficient evidence to convince a jury that the breach did not occur until the spring of 1994. Therefore, summary judgment is not appropriate on the contract action.

The defendants also argue that the plaintiffs cannot collect damages for the personal injuries sustained by John Matter because the injury did not ordinarily flow from the breach and was not reasonably foreseeable and within the contemplation of the parties at the time they formed the contract. Viewing the evidence in the light most favorable to the plaintiffs, a jury could well find that the defendants had a duty to repair damage to the bridge and it was

foreseeable that breaching this duty could cause an injury. Moreover, Pennsylvania law holds that where the breach is tortious, damages sounding in tort may also be recovered.

- (2) Tort Claim: The defendants argue that the harm John Matter suffered is too remote from the alleged negligence to constitute a proximate cause of his injury. The plaintiffs have produced sufficient evidence to permit a jury to find that the defendants were negligent and that their negligence was a substantial factor in causing the plaintiffs' injuries. While it is true that an event such as a flood can constitute a superceding event and cut off the defendants' liability, the defendants have presented little if any evidence that the sequence of events was highly remote, as is required by Pennsylvania case law. See Amarhauov v. Fassel, 442 Pa. Super. 111, 658 A.2d 808 (1995). On the contrary, if the negligence occurred as plaintiffs contend, the danger of the structural integrity of the bridge being harmed and injury resulting was well within the risk of that negligence.

The defendants also have presented little evidence that the flood was extraordinary, as is required by Pennsylvania law. Id. Nor have the defendants shown that the same harm would have occurred without the defendants' negligence. See Trude v. Martin, 442 Pa. Super. 614, 660 A.2d 626 (1995). Nor does Mr. Matter's voluntary act preclude liability as a matter of law, although a jury could well find that he was contributorily negligent. The peculiar way in which the injury resulted, or the extent of the injury, are not material as long as there was a foreseeable probability of injury and the plaintiff was within the ambit of danger. Id.

BY THE COURT,

Clinton W. Smith, P.J.