

**LITIGATION**

# The Overlooked Edge

## why reasonableness can tank repair claims in construction fights

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In construction disputes, proving damages often begins with a seemingly simple question: “What will it cost to fix?” Owners, developers, and their consultants routinely present repair estimates that carry an air of inevitability, assuming that the number alone proves both the injury and the entitlement to recovery. For contractors and their counsel, however, case law from across the country provides a critical limitation that frequently changes the entire damages analysis: Repair costs are recoverable only where both the repair itself and the associated costs are reasonable.

Though straightforward in theory, this principle has powerful and often underutilized implications in construction litigation. A recent Massachusetts trial court decision, while arising in the landlord–commercial tenant context, offers an example of how the reasonableness requirement can operate as a decisive defense.

**PROPERTY DAMAGES FRAMEWORK**

Many states recognize two primary measures of damages for injury to property:

1. Diminution in value; or
2. Reasonable cost of repair

Repair costs are commonly favored in litigation because they appear concrete and quantifiable. Yet courts have long warned that restoration estimates, if left unchecked, may produce distorted or excessive damages awards.

For example, the Massachusetts Supreme Judicial Court addressed this concern directly in *Wyman v. Ayer Properties, LLC*, holding that repair costs are recoverable only where the repairs are reasonably necessary and the costs are reasonable in relation to the alleged injury.

This limitation reflects an essential policy consideration: Damages are designed to compensate for loss—not to fund upgrades, redesigns, or economically irrational projects.

Other jurisdictions incorporate similar limitations on entitlement to repair damages, finding that repairs are unreasonable where the repair costs are disproportionate to the property’s loss of value. This reasonableness inquiry is where many repair-based damages claims succeed or fail.

Courts evaluating repair damages often look to multiple factors in determining how much a party can recover, such as whether: the proposed repair is technically necessary; the repair scope exceeded



what is required to remedy the defect; the work is restorative or an improvement; the costs are proportionate to the alleged injury; and/or the repair is feasible. Parties that focus most of their attention on the reasonableness of the costs and ignore the feasibility question altogether risk leaving a powerful defense on the table.

**A PRACTICAL EXAMPLE:  
WHEN THE BUILDING NO LONGER EXISTS**

In *Red Bear, LLC v. Enchilada, Inc.*, the plaintiff sought damages based on what it claimed it would have cost to repair alleged plumbing deficiencies and code violations. The legal theory itself was not unusual. The factual context, however, was highly relevant: Before undertaking any repairs, the plaintiff demolished the building.

The court’s analysis was both direct and instructive. After acknowledging that repair costs may serve as a measure of property damages, the court emphasized the governing limitation: “Both the cost of repair and the repair itself must be reasonable.”

The court then addressed feasibility—the issue that ultimately controlled the outcome: “Where repair is impossible, it is not reasonable to award damages based on the costs to repair.”

Because the structure no longer existed, there was nothing left to repair. The claimed restoration costs were therefore unrecoverable, and the court dismissed the owner’s claim for repair damages before trial.

Although the dispute arose outside the traditional construction defect framework, the reasoning applies with equal force to developer and owner claims seeking repair damages for allegedly defective or negligent construction work.

## IMPLICATIONS FOR CONSTRUCTION DISPUTES

Repair-based damages claims are a staple of construction litigation. Developers and owners frequently present extensive repair scopes involving system replacements, tear-outs, redesigns, and code-driven modifications. The reasoning in *Red Bear* reinforces several nationally recognized defenses that contractors and their counsel should carefully consider.

1. **Repair does not mean upgrade.** Damages must restore the claimant to the position it would have occupied but for the alleged wrongdoing—not to improve the property. Repair scopes that modernize systems, enhance performance, or correct unrelated design deficiencies may constitute improvements, not recoverable damages. Courts are particularly skeptical of repair theories that effectively transform localized defects into full-scale renovations or reflect scope increases.

2. **Disproportionate costs invite judicial scrutiny.** Even technically valid repairs may fail the reasonableness test if economically irrational. Contractors are not responsible for funding repairs that are grossly disproportionate to the alleged defect or injury. This issue frequently arises where plaintiffs demand complete replacement of functioning systems based on isolated deficiencies. The reasonableness requirement operates as an important check against damages models driven more by litigation strategy than actual necessity.

3. **Feasibility can defeat damages entirely.** The feasibility component of the reasonableness analysis is a powerful and underutilized defense available in construction disputes. If the proposed repair cannot physically be performed, has been rendered impossible by the party seeking repair damages, and/or depends on conditions no longer existing, then repair damages may be barred as a matter of law.

Construction disputes routinely present feasibility issues, including situations involving demolished structures, completed renovations, altered designs, or destroyed components. In such circumstances, repair damages may be an improper or even invalid measure of loss.

4. **Hypothetical costs are vulnerable.** Plaintiffs frequently rely on theoretical repair estimates untethered to actual expenditures. While many jurisdictions do not require completed repairs as a prerequisite to recovery, courts still demand proof that the repairs are reasonably necessary and the scope itself is reasonable. Inflated consultant estimates, litigation-driven scopes of work, and unsupported projections often provide fertile ground for dispositive challenges.

## STRATEGIC CONSIDERATIONS FOR CONTRACTORS AND COUNSEL

The reasonableness limitation is not merely a damages nuance — it is a strategic litigation tool capable of reshaping the trajectory of a dispute. Below are some key strategic considerations that parties should consider when involved in a repair damages dispute.

1. **Early expert framing is critical.** Experts should be retained as early as possible—often at the claim response stage or before discovery begins in a lawsuit—to help evaluate damages and other factors, including the cost of repair, whether the repair is reasonably necessary, whether the scope is proportionate, whether alternatives exist, and whether feasibility concerns apply. An expert analysis confined solely to pricing may inadvertently concede the reasonableness of an otherwise vulnerable repair theory.
2. **Challenge scope, not just price.** Courts frequently focus on whether the proposed repair itself is reasonable. Overbroad scopes of work are often more susceptible to challenges than disputed unit costs. Contractors who effectively reframe the dispute around necessity and proportionality often gain significant leverage, particularly at the summary judgment stage or during mediation.
3. **Use reasonableness as a weapon to end litigation early.** Unreasonable repair theories may justify ending litigation early through motions for summary judgment—dismissing the case outright, eliminating the riskiest claims, excluding damages evidence, or securing strong settlement leverage. In many disputes, the most impactful damages arguments hinge not on arithmetic, but on legal entitlement.

## THE BROADER CONSTRUCTION LESSON

Repair costs aren't automatic, repair scopes aren't immune from scrutiny, and repair damages are far from guaranteed. Many states require that repair-based claims stay anchored in reasonableness, proportionality, and feasibility—where those elements fall short, recovery may be barred as a matter of law.

For contractors hit with aggressive repair demands, this doctrine delivers the essential counterweight: What starts as a mere pricing squabble can reveal itself, on deeper review, as a game-changing legal battle. In construction litigation, where damages debates often take center stage, contractors and counsel who aggressively probe the reasonableness of claims can reshape the entire negotiation dynamic. By wielding the reasonableness doctrine as a powerhouse defense, contractors can dominate disputes, dismantling inflated repair claims and clinching outright victories. ■

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