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Does Reliance on a Negligently-Prepared Cost Estimate Give Rise to Damages? – Sometimes Yes, Sometimes No

Here are two fact patterns, in both cases the parties relied upon a negligently prepared cost estimate. In the first fact pattern the aggrieved party cannot prove their damages, and in the second fact pattern they can. For *your* case, I can help you understand your damages.

Fact Pattern A:

A corporation owns a number of apartment buildings and hires an engineer to estimate the cost of the major repairs required in the next five years for each apartment building. Later it is discovered that the cost of the major repairs had been significantly underestimated on some of the apartment buildings.

The corporation may have difficulty proving its damages. More specifically, damages are broadly defined as the sum of money required to put the corporation back in the position that it would have been in, if it had received competent advice. This is often split into three parts:

- **The Actual Result** – the position the corporation actually ended up in, that is to say, incurring the repair costs;
- **The Expected Result** – the position the corporation would have ended up in had it received competent advice, that is to say, incurring the repair costs;
- **The Difference (Damages)** = $nil. Actual repair costs less Expected repair costs = **($nil) Damages.**

Fact Pattern B on reverse

Fact Pattern B:

A corporation that owned a number of office buildings was to be separated into two corporations of equal value. The key inputs were: a) the appraised value of each office building, and b) an engineer's estimate of the cost of major repairs required in the next five years for each office building.

The office buildings were assigned to the two new corporations, and an equalization payment was made from one to the other to balance off the office buildings transferred.

After the office buildings were transferred to the new corporations, it was discovered that the cost of the major repairs had been significantly underestimated on some of the office buildings. The division of the properties was no longer equal.

The corporation that overpaid can prove its damage as follows:

- **The Actual Result** – the position the corporation actually ended up in, paying an equalization payment to the other corporation;
- **The Expected Result** – the position the corporation would have ended up in, receiving an equalization payment to the other corporation;
- **The Difference (Damages)** = $$$. Actual equalization versus the Expected equalization payment received = **$$$ Damages**.

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Get my help in understanding the Damages in your case.

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