Measure of Damages in Property Loss Cases: The Road Less Considered

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Reaching the proper measure of economic damages in a large property loss case can be a journey of unexpected travails. Winding through the labyrinth of liability issues is difficult enough. While addressing issues of privity, disclaimers, limitations, repose, the economic loss rule, and so forth, weary litigants can sometimes overlook the issue of what the underlying damages really are, each party assuming the matter to be a relatively straightforward calculation. It's only property, after all. However, the law on what is legally recoverable and what is not can be rough terrain indeed, even in a so-called straightforward property loss case. The following is a road map of sorts – a guide to the proper measure of property damages under North Carolina law.

Before beginning our road trip through property damages, consider the following hypothetical. A house is totally destroyed by fire. It had a fair market value of $100,000 before the fire but will cost $200,000 to rebuild, including $20,000 in code compliance upgrades and $5,000 in debris removal costs. What are the owners entitled to recover?

(a) the $200,000 replacement cost,
(b) $100,000 for the diminution in market value,
(c) $180,000 for replacement cost less code upgrades,
(d) $125,000 for diminution in value plus code upgrades and debris removal, or
(e) none of the above.

If the owners also incurred $30,000 to rent another house and furniture during the repairs, are these damages added to loss of the house and its contents? And what can the owners recover for the invaluable family heirlooms they lost?

The General Rule of Recovery

We begin the journey with a basic rule of recovery. For both real and personal property losses, the measure of damages in North Carolina is generally limited to "the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged."[1] Referred to as the "before and after rule,"[2] the doctrine generally prohibits the owner from recovering for the full cost to repair or replace damaged property where that damage exceeds the diminution in value. Thus, using our above hypothetical, if the house was worth $100,000 before the fire and costs $200,000 to rebuild, the damages will generally be limited to $100,000.

Recognizing the occasional harshness of this result, however, courts have adopted a flexible approach to what is admissible in proving diminution in value, allowing the jury to consider such factors as the actual replacement cost and the property's so-called "aesthetic value." In addition, some exceptions have arisen to the before-and-after rule under which plaintiff may be entitled to recover for damages in excess of the diminution in value.

Establishing Diminution in Fair Market Value

On our road map, the term "fair market value" will be defined as "the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to so."[3] Three well-recognized guides to appraisal have evolved, all of which take the property's pre-loss physical depreciation into account: (1) the cost approach; (2) the comparable sales approach; and (3) the income or economic approach.[4] The cost to rebuild or repair the property is not considered in any of these approaches.

Expert Testimony

On any journey, we will want the ablest and most experienced guide. Generally, the use of an expert is preferred when seeking to introduce testimony on the fair market value of property. However, it is not required under North Carolina law. Indeed, case law expressly allows the burden to be met by the testimony of the owner, even if that owner is not an expert witness. Goodson v. Goodson, 551 S.E.2d 200 (NC Ct. App. 2001); Appeal of Boos, 382 S.E.2d 769 (NC Ct. App. 1989); Bumgarner v. Tomlin, 375 S.E.2d 520 (NC Ct. App. 1989); Craven County v. Hall, 360 S.E.2d 479 (NC Ct. App. 1987); Kenney v. Medlin Construction and Realty Co., 315 S.E.2d 311 (NC Ct. App. 1984); Moon v. Central Builders, Inc., 310 S.E.2d 390 (NC Ct. App. 1984); Responsible Citizens v. City of Asheville, 302 S.E.2d 204 (NC 1982).

The broad standard for allowing testimony of the owner on the value of the owner's land is demonstrated in the following passage from Goodson:

> [T]here is no requirement that an owner be familiar with nearby land values in order to testify to the fair market value of his own property. Rather, an owner "'is deemed to have sufficient knowledge of the price paid [for his land], the rents or other income received, and the possibilities of the land for use, [and] to have a reasonably good idea of what [the land] is worth.'" Highway Comm. 285 N.C. at 652, 207 S.E.2d at 725 (quoting 5 Nichols, Law of Eminent Domain, § 18.4(2) (3rd ed. 1969)). As an owner of Tract C. Ms. Cobb could therefore competently testify as to its value.

551 S.E.2d at 205.

Replacement Cost as Evidence of Market Value

The road to establishing diminution in value is wide open in North Carolina. Indeed, not only is the jury free to consider replacement cost as a factor in that determination, but the court is obligated to instruct the jury to consider such cost in certain circumstances:

> Nonetheless, replacement and repair costs are relevant on the question of diminution in value and when there is evidence of both diminution in value and replacement cost, the trial court must instruct the jury to consider the replacement cost in assessing the diminution in value.

Huberth v. Holly, 462 S.E.2d 239 (NC Ct. App. 1995).

> Evidence of estimates of the cost to repair the damage to the plaintiff's property may be considered by you in determining the difference in fair market value immediately before and immediately after the damage occurred.

North Carolina Pattern Instruction – Civil 810.62.

This broad standard for determining diminution in fair market value appears to be premised on the fact that when property is damaged, the ability to calculate its past worth is often problematical, especially when the property has been totally destroyed:

> This rule [limiting damages to diminution in fair market value], which can be an approximation to truth in a limited number of cases, is often too remote from the factual pattern of the injury and its compensable items to reflect the fairness and justice which the administration of the law presupposes. For that reason it is applied with caution, and often with modifications designed to relax its rigidity and fit it to the facts of the particular case.

Phillips v. Chesson, 58 S.E.2d 343, 347 (NC 1950). Cost of repairs can inform the jury of the quality of the original construction and the extent of injury to the property:

> [T]he law recognizes that the cost of repairs has a logical tendency to shed light upon the question of the difference in market value

Richard W. Cooper Agency v. Irwin Yacht & Marine Corp., 264 S.E.2d 768 (NC Ct. App. 1980). This approach is consistent with that taken by our sister courts in the Southeast.[5]

Aesthetic Value as Evidence of Market Value

Our road trip through property damages will lead us through lands rich with beauty but difficult to quantify in terms of objective market value. In cases involving such landscape, North Carolina courts will allow the jury to consider the property's "aesthetic value." In Harper v. Morris, 365 S.E.2d 176, *disc. review denied*, 370 S.E.2d 223 (NC Ct. App. 1988), plaintiffs sued in trespass for damages to certain trees and shrubs that were cut down by defendant. The court noted that in an action for unlawfully cut timber the plaintiff has the right to elect one of two

measures of damages, either the diminution of the land's value caused by the loss of timber or the market value of the timber itself plus incidental damages. The plaintiff in Harper elected the "diminished value method, calculated by the difference in market value before and after the cutting," *i.e.*, the diminution in value to the land. 370 S.E.2d at 177. The court held that in arriving at the diminution in value to the land, the jury could consider not only the replacement cost of the lost timber but also its "aesthetic value":

> The purpose for which these trees and shrubs were grown and maintained and the contemplated use of the land, including aesthetic value to the landowners, in our opinion, directly affects the market value of this property. Similarly the cost of producing the trees and shrubs has some bearing on the value of plaintiffs' land, and one factor in determining the diminished value would be the cost of replacing or restoring the trees and shrubs to the same extent as is reasonably practicable. Diggs v. Railroad, 131 Mo.App. 457, 110 S.W. 9 (1908). *See generally* Annot. "Measure of Damages for Injury to or Destruction of Shade or Ornamental Tree or Shrub," 95 A.L.R.3d 508 (1979).
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> Appellant next contends the trial court erred by admitting evidence of replacement cost. We believe the testimony of the cost of replacing these trees and shrubs presented by plaintiff's expert witness was relevant and properly admitted.

365 S.E.2d at 178. *See also* Lee v. Bir, 449 S.E.2d 34, 39 (NC Ct. App. 1994) (allowing testimony of landowner that aesthetic value of property was particularly diminished by the fact that after removal of trees the "visibility of and closeness and proximity of [defendant's house] … was the major distraction that had occurred.").

Accordingly, in the above hypothetical involving a home estimated to be worth $100,000 before the fire but which cost $200,000 to rebuild, there is case law to suggest that the jury may consider not only the fact that the owners were required to incur twice the home's value to get it back into livable condition but also the aesthetic value of the house before the fire.

Going Beyond Market Value

Service Value

On our journey, we will cross many lands with no appreciable market value but with significant service value, such as hunting reserves, churches, hospitals, utility structures, school buildings, non-profit or charitable buildings, landmark buildings, statues, and lands or structures that have been in the family for generations. When such property is destroyed, the owner naturally desires compensation above the fair market value. North Carolina courts have recognized that the before-and-after rule does not adequately address the damages to such service structures:

> However, if there is no market, there can be no market value. The foundation for the before and after rule is lacking. Cost of repairs is then about the only available evidence of the extent of the loss.

Carolina Power & Light v. Paul, 136 S.E.2d 103, at 104 (NC 1964). Drawing from case law in other jurisdictions, the court in Paul held that the cost to repair, rather than diminution in market value, was the proper measure of damages for the loss of plaintiff's utility pole, transformer, transmission line, and guy wire.

Likewise, in Huberth v. Holly, 462 S.E.2d 239, 243 (NC Ct. App 1995), the court drew not only from North Carolina law but also from that of other jurisdictions in holding that property imbued with a purpose personal to the owner is recoverable on a repair cost basis:

> When, however, the land is used for a purpose that is personal to the owner, the replacement cost is an acceptable measure of damages. Plow v. Bug Man Exterminators, Inc., 57 N.C.App. 159, 162-163, 290 S.E.2d 787, at 789 (termite damage to personal residence), *disc. rev. denied*, 306 N.C. 558, 294 S.E.2d 224 (1982), [Dan B.] Dobbs, [*Dobbs Law of Remedies*] § 5.2(2), 718 [(2d ed. 1983)]; Restatement (Second) of Torts § 929 cmt. B (1979); *see also* Trinity Church v. John Hancock Mut. Life Ins. Co., 399 Mass. 43, 502 N.E.2d 532, 535-36 (1987) (personal purpose doctrine applied to prevent "miscarriage of justice.").

462 S.E.2d at 243; *see also* North Carolina Pattern Jury Instruction, Civil 810.64 (Replacement February 2000).

Thus, North Carolina appears to follow the general rule adopted in other jurisdictions allowing replacement cost of a service structure where diminution in value does not adequately measure the true value of the property.[6]

"Intrinsic" Value

Building memories is an important consideration on our journey. Certain photographs and trinkets we pick up along the way will hold significant value personal to the owner, though worth nothing on the objective market. North Carolina law recognizes the unfairness of limiting the plaintiff to the objective market value of such items and has developed a pattern jury instruction addressing the issue. North Carolina Pattern Jury Instruction, Civil 810.66 (Replacement February 2000).

The preamble to Civil Instruction 810.66 makes it clear that the instruction is limited to situations "where damages measured by market value would not adequately compensate the plaintiff and repair or replacement would be impossible (as where items such as a family portrait are destroyed) or economically wasteful (as where obsolete property is damaged beyond the economically feasible repair)." The instruction then allows for recovery of the "intrinsic" value to the owner, but sets forth several factors for the jury to consider in making that determination:

> The plaintiff is entitled to recover the actual value of his property immediately before it was damaged (less the salvage value, if any, that it had after its damage). The actual value of any property is its intrinsic value; that is, its reasonable value to its owner. In determining the actual value of the plaintiff's property, you may consider:
>
> [the original cost of (labor and materials used in producing) the (*specify property*)]
>
> [the degree to which the (*specify property*) has been used]
>
> [the condition of the (*specify property*) just before it was damaged]
>
> [the uniqueness of the (*specify property*)]
>
> [the practicability of [repairing] [reconstruction] the (*specify property*)]
>
> [the cost of replacing the (*specify property*) (taking into account its depreciation; that is, the degree to which it had been used up or worn out with age)]

[the insured value of the property]
[the opinion of the plaintiff as to its value]
[the opinion of any experts as to its value]
[*state other appropriate factors supported by the evidence*]
You will not consider any fanciful, irrational or purely emotional value that (*specify property*) may have had.

The issue of whether insurance coverage on the item is admissible was addressed in William F. Freeman, Inc. v. Alderman Photo Co., 89 N.C. 73, 365 S.E.2d 183 (1988), a case involving architectural drawings destroyed from a leaking roof. In ruling that the trial court did not err in admitting evidence that the drawings where insured for only $500.00, the court stated as follows:

> "Evidence of insurance coverage is generally inadmissible in negligence suits. … It is admissible, however, 'if it has some probative value other than to show the mere fact of its existence.'" Shields v. Nationwide Mut. Fire Ins. Co., 61 N.C. App. 365, 380, 301 S.E.2d 439, 448, *disc. rev. denied*, 308 N.C. 678, 304 S.E.2d 759 (1983) (citations omitted). Here the insurance coverage was probative for a reason other than its mere existence. Since no market exists for the drawings, we believe the amount of insurance coverage was relevant in determining actual value and was properly admitted. It was for the jury to decide how much weight the testimony deserved. We do not believe the probative value of this testimony was outweighed by prejudicial impact on the jury.

365 S.E.2d at 186.

Sentimental Value and Mental Anguish

Some memorabilia of our journey may carry an emotional element. In some cases, the emotions are deep enough to cause actual mental anguish for a lost item. Although North Carolina law prohibits consideration of "fanciful, irrational or purely emotional value," there is no clear guidance on whether and to what degree sentimental value or mental anguish may be considered in awarding damages. Language from the case of Thomasson v. Hackney & Moale Company, 74 S.E. 1022 (NC 1912), however, leaves open the possibility that in unusual cases such alleged damages may be considered by the jury.

In Thomasson, the plaintiff sued a photograph developer that had lost the negatives of photographs the plaintiff had taken of her dying infant child just before the child died. The plaintiff sued only for mental anguish associated with the developer's negligence, but not for the actual value of the lost negatives. The jury's award was thus confined to the mental anguish damages without considering the value of the negatives. In granting a new trial, the court held that it was improper to have charged the jury on mental anguish without basing those damages on the value of the negatives. In dicta, the court went on to suggest that sentimental value, or "pretium affectionis," may be recoverable upon proper proof of mental anguish:

> The plaintiff, if she establishes her cause of action, will be entitled at least to nominal damages, and she may recover the value of the films if she can prove the same. Whether, in ascertaining this value, the jury may consider the "pretium affectionis," that is, an imaginary value placed upon a thing by the fancy of its owner, growing out of his or her attachment for the specific article, its associations, and so forth, which, perhaps, may not inaptly be called its sentimental value, we need not say, as there was no recovery for the value of the films, but it may not be irrelevant to refer to the question, and, this being so, we cannot do better than to quote what is said in Hale on Damages at page 184: "In most cases the market value of the property is the best criterion of its value to the owner, but in some its value to the owner may greatly exceed the sum that any purchaser would be willing to pay. The value to the owner may be enhanced by personal or family considerations, as in the case of family pictures, plate, etc., and we do not doubt that the 'pretium affectionis,' instead of the market price, ought then to be considered by the jury or court in estimating the value. When analyzed, the damage caused by the loss or destruction of property of this nature consists of two elements: First, the loss of the real property value; second, the grief or mental suffering at the loss of the cherished article. From this we gather what we apprehend to be the true rule, which is that, where property is of such a nature that its loss or destruction, under the circumstances, naturally and proximately causes mental suffering, compensation for such mental suffering may be recovered in a proper action in addition to the actual value of the property." Suydam v. Jenkins, 3 Sandf. (N. Y.) 621.
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> ….
>
> Of course damages which are merely imaginary or have no real or substantial existence, should not be allowed. In this case the question is purely academic as it is not presented by any exception, but we considered it proper that we should make some reference to it, as it is contended that the films had a value peculiar to plaintiff, apart from their intrinsic value.

74 S.E. at 1024-25.

Unfortunately, the terms "mental anguish" and "sentimental value" are not further discussed in our road map of cases. Nor have courts distinguished these terms from aesthetic value or intrinsic value, begging the question of what degree of overlap there may be between the various terms.

Loss of Use

Our journey is ill-fated if we lose our gear. North Carolina allows an owner to recover not only for diminution in fair market value, but also for the loss of use of property during the time reasonably necessary for repair or replacement.

> To stop there [at diminution in market value] would not fully compensate the plaintiffs for the losses sustained by them as a direct and natural result of the negligence of the defendants. Another such result of the negligent damage to or destruction of the house is that the plaintiffs cannot have the use of their house during the time reasonably necessary for its repair or replacement and must obtain lodging elsewhere for such period of time. For this loss they are also entitled to recover from the wrongdoers, the burden being upon the plaintiffs to establish the amount of such loss with reasonable certainty.

Huff v. Thornton, 213 S.E.2d 198 at 204 (NC 1975). The plaintiffs in Huff were thus entitled to testify

> as to the availability of other comparable lodging, its rental cost, the time required for repair or rebuilding of the Huff residence and the cost of moving. These are elements of damage flowing from the plaintiffs' loss of use of their own residence.

Id.

The rule is consistent with the Restatement of Torts § 928 (1939), which provides:

> Where a person is entitled to a judgment for harm to chattels not amounting to a total destruction in value, the damages include compensation for
> (a) the difference between the value of the chattel before the harm and the value after the harm, or at the plaintiff's election, the reasonable cost of repairs or restoration where feasible, with due allowance for any difference between the original value and the value after repairs, and

(b) the loss of use.

In the above example of the destroyed house worth $100,000 before the fire, the owners would not be limited to the $100,000 pre-loss market value for the house itself, as they would also be entitled to recover for the reasonable rental costs of their new lodging and its furnishings.[7]

Code Upgrades

A property owner can face an uphill struggle when repairing the property means having to comply with a regulation or code either newly enacted or from which the owner was previously exempt before the loss. Although North Carolina does not appear to have addressed the issue, other jurisdictions have allowed the additional cost of code compliance.[8]

Debris Removal

Just as cleaning up before moving on is a must for any journey, removing debris after a structural loss is a prerequisite for rebuilding the structure. The question of whether the cost to remove debris from the land is recoverable *in addition* to the diminution in market value of the structure does not appear to be directly addressed by our courts. However, one way to reason through the issue is to consider the distinct nature of the structure versus the land on which it sits. If the structure is totally destroyed, leaving debris on the land, the owner not only has lost the value of the structure but also will incur lost value to the land itself because of the need to remove the debris. A plot of land with debris is less valuable to the rational consumer than a plot of land without the debris, and the diminution in value to the land should be directly related to the cost of removing that debris. Under this reasoning, the debris removal cost is arguably recoverable as an element of the land damage separate and apart from the damage to the structure.

Prejudgment Interest

The longer a journey, the more taxing – but also the more interesting and rewarding. North Carolina allows an additional award for prejudgment interest for both contract claims and tort claims. N.C. Gen. Stat. § 24-5 (2002). The legal rate of interest is eight percent. N.C. Gen. Stat § 24-1 (2002). When the action is one for breach of contract, interest runs from the date of the breach. § 24-5(a). When the action is a tort claim, interest runs from the date suit is filed. § 24-5(b) ("In an action other than contract, any portion of a money judgment designated by the fact finder as compensatory damages bears interest from the date the action is commenced until the judgment is satisfied.").

The term "compensatory damages" has been defined as "damages in satisfaction of, or in recompense for, loss or injury sustained." Dobrowolska v. Wall, 138 N.C.App. 1, 12, 530 S.E.2d 590, 598 (2000). An action for damages to a house or building or other item of property would reasonably fall into that definition. It should be noted, however, that a contribution claim is not considered one for "compensatory" damages and that prejudgment interest is not allowed for such a claim until a verdict is issued. Medical Mutual Insurance Company of North Carolina v. Mauldin, 577 S.E.2d 680 (N.C. Ct. App. 2003).

Finishing the Hypothetical Road Trip to Recovery

Returning to our hypothetical house fire, we have a house once worth $100,000 that will take $200,000 to rebuild, including $20,000 in code upgrades and $5,000 in debris removal costs. Assuming the house is not an historic landmark or service building and that there are no significant family heirlooms, our measure of damages will begin with $100,000 in the lost market value, but the jury will probably be allowed to consider the fact that it will take twice the home's value to repair the house. The jury may also be allowed to consider the $20,000 in code

upgrades and the $5,000 in debris removal costs the owner incurred. If the insured incurred rental costs of $30,000, that figure will be included in the judgment if the jury believes it to be reasonable. In addition, unless the plaintiff misses the issue, the judgment will be increased by the prejudgment interest dating from the date of breach if it is a contract case and from the date suit is filed if it is an action "other than contract." All of this assumes that there is no "service" or "intrinsic" value to the house or its contents, which could increase the judgment.

Conclusion

The road to recovery in large property losses can be twisted, dark, and scary. The practitioner cannot simply rely on the general rule limiting recovery to the diminution in fair market value, without also understanding the nuances of the many issues discussed above. The applicable law on these issues should be read carefully and, in many cases, will need to be applied by analogy in the absence of cases directly on point. As with any rough terrain, it should be traveled carefully, cautiously, and with as many guides as possible.

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[1] North Carolina Pattern Jury Instruction – Civil 810.62. *See also* Phillips v. Chesson, 58 S.E.2d 343, 347 (NC 1950) ("[T]he measure of damages recoverable for injury to property is the difference between the market value immediately before the injury and the market value immediately afterwards.").

[2] Carolina Power & Light Company v. Paul, 136 S.E.2d 103 (NC 1964).

[3] North Carolina Jury Pattern Instruction – Civil 810.62. *See also* as Huff v. Thornton, 213 S.E.2d 198, 206 (NC 1975) (defining fair market value as "the amount which would be agreed

upon as a fair price by an owner who wishes to sell but is not obligated to do so, and a buyer who wishes to but is not compelled to [do] so.").

[4] In re Greens of Pine Glen Ltd., 555 S.E.2d 612, 616 (NC Ct. App. 2001).

[5] *Cf.* Fuller v. Martin, 125 So.2d 6 (Ala. 1961); Ryland Group v. Daley, 537 S.E.2d 732 (Ga. Ct. App. 2000) ("This difference in value may be illustrated by the reasonable cost of repair of defects.") (quoting Eldridge, Georgia Personal Injury & Property Damage – Damages, §§ 8-2 and 8-3); Redbud Coop. Corp. v. Clayton, 700 S.W.2d 551, 561 (Tenn. Ct. App. 1985) ("Of course, the trier of fact can also take into consideration the reasonable cost of restoring the property to its former condition in arriving at the difference in value immediately before and after the injury to the premises."); Averett v. Shircliff, 237 S.E.2d 92 (Va. 1977) ("The reasonable cost of repairs is one of the evidentiary factors in determining the market value of an automobile after it has been damaged.").

[6] Trinity Church v. John Hancock Mutual Life Ins. Co., 502 N.E.2d 532 (Mass. 1987) (church); Newton Girl Scout Council v. Massachusetts Turnpike Auth., 138 N.E.2d 769 (Mass. 1956) (girl scout camp); Leonard Missionary Baptist Church v. Sears, Roebuck and Co., 42 S.W.3d 833 (Mo.Ct.App. 2001) (church); Commonwealth of Pennsylvania v. Crea, 483 A.2d 996 (Pa. Cmmw. 1997) (bridge); *see also* Roman Catholic Church of Archdioces of New Orleans v. Louisiana Gas Serv. Co., 618 So.2d 874, 877-80 (La. 1993); Regal Construction Co. v. West Lanham Hills Citizen's Association, 256 Md. 302, 260 A.2d 82, 84 (1970); Moulton v. Groveton Papers Co., 114 N.H. 505, 323 A.2d 906, 911 (1974).

[7] *See also* North Carolina Pattern Jury Instructions, Civil 810.60 n. 1 (Feb. 2000) ("Where the evidence could justify recovery for loss of use, that should be submitted as a separate and additional issue.")

[8] Service Unlimited v Elder, 542 N.W.2d 855 (Iowa Ct. App. 1995) (Court properly computed damages for inadequate insulation by using "cost of repair" instead of "reduction in value" where there was insufficient space between ceiling and roof to simply add additional layer of insulation over existing insulation, requiring installation of new insulated roof over existing roof, even though cost of repair was disproportionate to additional heating and cooling costs, where homeowners testified heating and cooling problems continued after larger air conditioner was installed, and they were still unable to maintain second level at comfortable temperature.); *see also* Zindell v. Central Mutual Ins. Co. of Chicago, 269 N.W. 327 (Wis. 1936); Aetna Ins. Co. v. 3 Oaks Wrecking & Lumber co., 382 N.E.2d 283 (Ill. App. 1978); Peluso v. Singer General Precision, Inc., 365 N.E.2d 390 (Ill. App. 1977); and A.J. Jacobson Co. v. Commercial Union Assur. Co., 83 F.Supp. 674 (D. Minn. 1949). *But see* Mercer v J. & M. Transp. Co., 103 Ga. App 141, 118 SE.2d 716 (The proper measure of damages was not the cost of restoration, where a 25 to 30-year-old house was totally destroyed, and did not originally have plumbing, wiring, bathrooms, or modern heating, and where the cost of restoration would be far in excess of the difference in value before and after the injury to the premises.).