MCDONALD, J., concurring in part and dissenting in part. I agree with part I of the majority opinion. I also agree with the portion of part II of the majority opinion that reverses the restoration date award and remands the matter to the trial court to set a new date.

I disagree as to part II of the majority opinion that sustains the court's decision not to direct progress payments while enforcing the award. I would hold that, contrary to the majority's reading of General Statutes § 52-421, the court had the authority to direct progress payments during the restoration period, so that the defendant, Marguerite A. Komondy, could have completed the restoration within the restoration period.

Section 52-421 (b) provides in relevant part: "When the [arbitration] award requires the performance of any other act than the payment of money, the court . . . may direct the enforcement thereof in the manner provided by law for the enforcement of equitable decrees." The court read § 52-421 as limiting the authority of the court to enter an order for progress payments. The award for restoration in this case was in the form of a dollar amount that also specified that the period of restoration was to end on February 1, 2009. The restoration period was, therefore, part of the judgment and required the defendant, Komondy, to do the restoration work, an act other than the payment of money, by February 1, 2009.

Our Supreme Court in *Bodner* v. *United Services Automobile Assn.*, 222 Conn. 480, 505, 610 A.2d 1212 (1992), however, stated that it did not read § 52-421 as limiting the jurisdiction of the court over arbitrated contract disputes. The Supreme Court explained that the arbitration statutes do not create the jurisdiction of the Superior Court but, rather, validate it. The Supreme Court held that the court's power is inherent in the judicial power conferred on the court by article five, § 1, of the constitution of Connecticut. Reading § 52-421 in this light, I would conclude that the Superior Court had the authority or power to direct progress payments during the restoration period as the court had the power to direct the manner in which restoration would proceed, by ordering payments during the restoration period. Although, I agree with the observation in footnote 14 of the majority opinion that an insured would be entitled to progress payments after the insured entered into a valid construction contract. I would also conclude that expeditious progress payments are required to ensure that the restoration date is met. A condition providing that the plaintiff make expeditious progress payments would ensure that the defendant would not be required to finance the restora-

tion before receiving any indemnity from the plaintiff.

Our Supreme Court in *Northrop* v. *Allstate Ins. Co.*, 247 Conn. 242, 249–51, 720 A.2d 879 (1998), commented on the argument by the defendant in that case that the insured be required to pay out the money for repair or replacement, rather than to incur a valid debt for the completed repairs before any payment was required of the defendant. In *Northrop*, our Supreme Court stated that "it would defy the reasonable expectations of the insured, and in many cases place undue burdens on him, to require the insured to finance the withheld depreciation portion of the repair or replacement of a fire loss in order to secure the replacement cost coverage from which an additional premium had been paid." Id., 251. Applying *Northrop*, it is unreasonable in this case to expect that a lender would finance a restoration cost of more than $1 million over the fair market value of the defendant's home.

Moreover, following the court's confirmation of the arbitration award, the defendant filed a motion for articulation as to satisfaction of the award. This issue had not been addressed in the court's decision confirming the arbitration award. When the issue of payments had been argued before the court, the plaintiff took the position that the award would be paid incrementally as restoration construction progressed.[1] The defendant's husband testified that he would be satisfied by progress payments but complained that it was after a long fight and an arbitrator's award that architectural fees were paid. The court, however, concluded that it did not have the authority to order such payments. The court stated that it did not have the authority and, as a result, "decline[ed] to order that the arbitrator's award be disbursed as progress payments."

During oral argument before us, when the issue of the defendant's ability to do the restoration work was raised, counsel for the plaintiff stated that the plaintiff "typically" would pay the defendant's restoration expense when the defendant made an agreement binding herself to restoration. We should therefore remand this case for the trial court to consider requiring the typical, as stated by the plaintiff, and expeditious release of restoration funds so that the defendant could find it possible to enter into a contract for the reconstruction of her home contingent on such payments by the plaintiff. Otherwise, as our Supreme Court stated in *Northrop*, the failure to pay for the restoration work until it is completed and paid for by the defendant would render the restoration coverage "largely illusory." *Northrop* v. *Allstate Ins. Co.*, supra, 247 Conn. 251.

Accordingly, I concur with the decision to remand the matter to the trial court to set a new restoration date. I respectfully dissent, however, regarding the decision that the court not direct progress payments. I

would remand the matter to the trial court to implement the defendant's restoration by making definite the plaintiff's agreement to make progress payments and to do so promptly.

[1] The court asked if the plaintiff would put its commitment to make progress payments in writing as a matter of fairness, and counsel for the plaintiff did not object. The court stated its purpose was to avoid a "catch-22" situation.