Courts Stay Consistent In 'Period Of Restoration' Rulings

By **Jennifer Gibbs and Adrienne Nelson** (November 13, 2025)

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A necessary and critical component of a lost business income claim is the calculation of the period of restoration. However, despite its recognized importance, the period of restoration appears to be one of the least litigated, but most consequential, dimensions of first-party property and time element coverage.

A Sept. 19 decision from the U.S. District Court for the District of Arizona, Madrona Health Inc. v. Nationwide General Insurance Co., underscores both the hypothetical, policy-tethered nature of the period and the fact-intensive character of its duration.[1]

Considering the Madrona decision, this article outlines the contractual basis for the period of restoration, typical triggers and endpoints, how courts have treated disputes over its application and scope, and best practices in addressing period-of-restoration issues during the claim adjustment process.

Contractual Architecture: What the Period of Restoration Is — and Is Not

Most property and time element forms define the period of restoration as the theoretical time needed — using "due diligence and dispatch" or "reasonable speed" and materials of a "similar quality" — to repair, rebuild or replace damaged property and resume operations. The clause is typically prospective and hypothetical, often keyed to when the property should be repaired or replaced, not the date when it is actually restored.

Two corollaries flow from this baseline.

First, the period of restoration is a tool of temporal allocation. It limits indemnity for business income and extra expense to a period tethered to the repair/replace/rebuild horizon for the damaged property. It does not, standing alone, guarantee protection until the insured's operations are fully restored in a business performance sense; that role — if purchased — may be played by an extended business income (EBI) or extended period of indemnity provision.

Second, the provision is property-centric, not market-centric. Losses caused by marketplace dislocation, customer behavior or policy-excluded impediments do not generally extend the restoration period, though such downstream effects may be relevant under separate, extended coverages or distinct insuring agreements (e.g., leasehold interest).

Triggers and Endpoints: How the Clock Starts and Stops

Policies usually commence the period of restoration upon the date of direct physical loss or damage at the described premises, often after applying any waiting-period deductible. The period's end date is typically the earlier of the time by which the property should be repaired, rebuilt or replaced with reasonable speed and similar quality or the time at which operations resume at a new, permanent location.

Courts have consistently emphasized the hypothetical nature of the period's endpoint. In practice, that generally means:

- The endpoint is not extended by unrelated or excluded delays. For example, delays caused by third-party acts or omissions, governmental permitting where excluded, or subsequent excluded causes of loss are typically out of bounds for measuring the restoration period.

- The endpoint is not pegged to the literal rebuilding of an entire complex if the insured occupied a suite or store within a larger structure. Instead, it is measured by the reasonable time to replace the insured's premises and critical property interests necessary to resume operations.

- The endpoint of the period of restoration often diverges from actual time needed to restore the business to its profitability, including making up for lost market share. Extended business income coverages, including EBI or extended period of indemnity coverage, are designed to bridge the gap between physical restoration and the return of business to preloss levels, preventing the period-of-restoration clause from being stretched to cover pure post-reopening market recovery.

How Courts Frame and Resolve Period-of-Restoration Disputes

While the body of case law addressing the period of restoration is sparse, both older and newer decisions reflect consistent themes: The period is hypothetical, property-focused and often separable from causation and market-recovery questions.

In the seminal case, Duane Reade Inc. v. St. Paul Fire & Marine Insurance Co., which involved the period of restoration for a drugstore destroyed in the Sept. 11 attack on New York's World Trade Center, the U.S. District Court for the Southern District of New York construed the period as a hypothetical timeline to rebuild or replace the damaged store and resume operations at the World Trade Center location.[2]

Absent language that conflicted with the coverage provided in the insurance policy, the U.S. Court of Appeals for the Second Circuit refined the district court's formulation, holding, in 2005, that coverage continues for the time reasonably required to repair, rebuild or replace the functional equivalent of the lost store and resume operations in a permanent location reasonably equivalent to the prior site — not tied to rebuilding the World Trade Center itself.[3]

The appellate court also made clear that once the legal question concerning the scope of coverage provided by the insurance policy is resolved, the length of the period is a valuation question that can be sent to appraisal.[4]

In 2025, there has been a recent flurry of decisions addressing the period of restoration.

Madrona Health v. Nationwide General Insurance

Madrona underscores both the hypothetical, policy-tethered nature of the period and the fact-intensive character of its duration. Following a June 2021 fire at an administrative office, an insurer paid business income through November 2021. The policy defined the endpoint as the date when the property should be repaired, rebuilt, or replaced with reasonable speed and similar quality.

The parties had initially targeted an Oct. 31, 2021, completion, and the insurer later issued a letter contemplating a contingent extension through year-end. On summary judgment, the court declined to fix the endpoint as a matter of law and denied the insurer's motion on the breach-of-contract theory.

The policyholder had adduced evidence that landlord-related factors impeded progress, creating a genuine dispute over what reasonable speed meant in the circumstances. In line with authority recognizing that what constitutes reasonable speed is often a jury question, the court left the restoration period duration for trial.

At the same time, the court rejected bad faith and punitive damages claims, finding no probative evidence that the insurer subjectively knew its handling was unreasonable, including as to cessation of payments after November and the contingent nature of any December extension.

Madrona thus illustrates a recurring pattern: Courts are receptive to fact-driven disputes over the period's length while remaining skeptical of tort liability premised on reasoned, supported differences in scheduling or methodology. Absent evidence that an insurer's calculations were made intentionally or maliciously to reduce its payment obligations, courts are unlikely to view its actions as improper to support bad faith and punitive damages claims.

Comprehensive Medical Center v. State Farm

In Comprehensive Medical Center Inc. v. State Farm Mutual Automobile Insurance Co., the U.S. Court of Appeals for the Ninth Circuit affirmed summary judgment in favor of State Farm where the record supported a period-of-restoration endpoint of six months or less.[5]

The court concluded in its Feb. 6 ruling that the policy's "should be repaired ... with reasonable speed" language excluded from the hypothetical period of restoration time attributable to acts or decisions of third parties, ordinance or law delays, and subsequent excluded leakage events. The court also recognized that appraisal panels may resolve factual disputes and arrive at a valuation of the loss, including preloss condition and trajectories relevant to amount of loss.

Inland Fresh Seafood v. Travelers

In its Sept. 22 ruling in Inland Fresh Seafood Corp. of America Inc. v. Travelers, the U.S. District Court for the Eastern District of Louisiana distinguished the period of restoration from EBI, rejecting an interpretation that would make EBI meaningless by ending it the day it begins.[6]

Addressing bad faith allegations tied to competing expert analyses of the restoration timeline, the court found a legitimate expert dispute does not establish bad faith. Separate issues of untimely payment and EBI interpretation proceeded to the jury.

Collectively, these decisions define period of restoration as:

- Hypothetical: measured by what should have occurred with due diligence and reasonable speed, not what actually happened.

- Property-oriented: tied to repairing, replacing or rebuilding of the damaged property at the described premises (or relocation to a reasonably equivalent permanent location), excluding external causes and policy-excluded delays.

- Separate from EBI: preserving the distinct function of any extended indemnity provision to address post-reopening market recovery.

Common Pitfalls in Adjusting and Litigating the Period of Restoration

The reported decisions identify issues that can arise in the adjustment of time element claims involving a dispute over the appropriate period of restoration under the policy.

Conflating Operations Restoration and Property Restoration

Courts have repeatedly rejected attempts to extend the period of restoration to encompass the time needed to regain preloss customer levels or market share, finding that is a distinct coverage inquiry under EBI, not the restoration period.

Anchoring to Actual Repair Durations Laden With Excluded or Extraneous Delay

The "should be repaired" standard is theoretical and forward-looking. Tethering the period to real-world delays that policies expressly exclude or that fall outside due diligence benchmarks is not appropriate.

Overreliance on "Same Site" Arguments

Unless the policy language uniquely ties the period to rebuilding the exact same premises, courts measure reasonable restoration by the time to replace or relocate to a reasonably equivalent permanent location.

Ignoring Jurisdictional Differences in Appraisal Scope

Disputes about whether appraisers can determine causation and restoration duration should be examined with state-specific appraisal statutes and jurisprudence in mind.

Interplay With Bad Faith and Statutory Interest

From the above-cited opinions, two themes emerge. First, courts are skeptical of bad faith theories premised on reasonable, expert-driven disputes over restoration timelines, payments made as a good faith gesture to resolve disputes between experts, or where the evidence reflects transparent calculations and communications.

Inland Fresh illustrates that reliance on a qualified expert's critical-path estimate — where both sides present experts — generally defeats bad faith theories tied to the period's length.[7]

Madrona demonstrates that no bad faith or punitive claim tied to payment cessation and methodology changes exists where the record fails to show the insurer intentionally made those changes to reduce its payment obligations and instead reflects transparent calculations, contingent communications and/or payment offered in good faith to resolve a disagreement between expert opinions.[8]

Second, separate timeliness and payment-handling issues can still create exposure.[9]

In Inland Fresh, the court found a per se statutory violation where an undisputed payment was delayed beyond the statute's deadline; and it allowed a bad faith theory to proceed based on an arguably unreasonable interpretation of EBI that would make that coverage illusory.[10] These determinations are jurisdiction-specific and turn on proof-of-loss rules and statutory timing requirements.

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[1] Madrona Health Incorporated v. Nationwide General Insurance Company, 2025 WL 2689771 (D. Arizona 2025).

[2] Duane Reade Inc. v. St. Paul Fire & Marine Ins. Co., 279 F.Supp.2d 235 (S.D.N.Y. 2003), aff'd as modified, Duane Reade Inc. v. St. Paul Fire & Marine Ins. Co., 411 F.3d 384 (2d Cir. 2005).411 F.3d at *392, quoting 279 F.Supp.2d at 239.

[3] Duane Reade, 411 F.3d at *394-395.

[4] Id. at 398-99.

[5] Comprehensive Medical Center Inc. v. State Farm, 2025 WL 416814 (9th Cir. 2025).

[6] Inland Fresh Seafood Corp. of America, Inc. v. Travelers (E.D. La. 2025).

[7] 2025 WL 2694628 at *10.

[8] 2025 WL 2689771 at *2-3.

[9] 2025 WL 2694628 at *8.

[10] Id. at *9 and *12.