

NEW WEAPONS TO WARD OFF Y2K PROBLEMS: THE FEDERAL & STATE Y2K STATUTES by Al Harrison

Year 2K Problem

The Year 2,000 Problem promises to minimally cause excitement and maximally to deliver chaos to a diversity of industries. Many plaintiffs' lawyers are anxiously awaiting the floodgates to open against such likely target-defendants as software vendors, computer hardware manufacturers, medical equipment manufacturers, and insurance companies. Y2K litigation has, indeed, already commenced throughout the country.¹ Settlement of class action litigation brought against Sage U.S., Inc. relating to the Y2K compliance of DacEasy and Timeslips software has been granted preliminary approval by the 44th District Court of Dallas County². A potentially significant complaint for declaratory relief has been filed by GTE Corporation against several insurance companies for indemnification for costs incurred to avoid or minimize loss associated with the Y2K problem.³ Standard language recited in the various insurance policies indicates that the insurance company "insures against all risks of physical loss of or damage to property described therein," including "any destruction, distortion or corruption of any computer data, coding, program or software..." Many publishers have already issued litigation guides with a panoply of forms and concomitant practice information.⁴

The potential breadth of the legal implications of the Y2K problem has received considerable commentary during the past several months. An excellent presentation of this issue was delivered by Howard Nations during the State Bar's Year 2000 Course.⁵ Coverage includes tort and contractual litigation, liability of corporate officers and directors, and insurance issues. Separate from potentially enormous litigation expenses, the estimated price paid worldwide for correcting the Y2K problem exceeds \$300 billion and may even reach \$600 billion.⁶

What is the fuss about? The anomalous Y2K problem arises due to two-digit year coding of date-related fields. Concomitant anomalies arise due to leap year coding and "999" (default) coding. The two-digit year coding problem occurs when computer clocks, read-only memory, and operating system and application software refer to year via the last two digits — excluding the first two digits, i.e., "98" instead of "1998." If computer components in hardware or software cannot distinguish the year 2000 from the year 1900, based upon a year represented merely by "00," then operation of the computer may abnormally terminate or engender unpredictable results. Interestingly, under Year 2K conditions, an IBM-compatible

computer may revert to a date of January 4, 1980, corresponding to the genesis of the Microsoft DOS operating system.

A related, leap year coding problem arises under pathological circumstances manifest in the Year 2K classified as a “Super-Leap Year.” A Super-Leap Year occurs every 400 years: such a leap year aberration has not occurred since 1600! While years ending in “00” are ordinarily not leap years, e.g, the year 1900, a year that is divisible by 400 such as the year 2000 is, incredibly, a leap year. Many programmers in the 1960s and 1970s were clueless about Y2K having a 29th day in February⁷. Another curious coding problem occurs with software that uses a year of “99” or date of “9/9/99” to signal when certain archived data and the like is set to expire. This was simply an “idiot-proof” convention adopted by system designers and programmers to represent the latest date (in the distant future) that could be used to as an expiration date. While, depending upon the pertinent computer program code, such files may have expired on 9/9/99, no problems have been reported.

Beyond this software-based problem, the internal clocks of microprocessors and the like are obviously date-sensitive. Many of the myriad microprocessors that populate machines and appliances virtually everywhere may cease to function or may malfunction on or about January 1, 2000. Besides office computer systems, such behavior may affect the plethora of electronic devices that routinely sustain office operations, including telephones, fax machines, copy machines, combination printer-fax-copiers. Office building logistical operations implicating security-doors, burglar alarms, elevators and escalators may depart from normalcy. The potential impact of Y2K failures may rain on such global industries as banking, healthcare, power and water supply. Common activities such as automobile and air travel may not be Y2K compliant. What steps have the federal government and state governments taken to prevent the sky from falling?

Y2K Statutes

Y2K litigation is not only unique, but also apt to engender enormous legal expenses and adversely affect the ongoing operation of businesses — particularly small businesses — and the infrastructure characterizing virtually all entities in the public and government sectors. The permeation of computers in modern society and the reliance upon information technology have rendered the integrity of the underlying computer systems to be susceptible to quakes caused by Y2K problems or the like. To minimize the adverse impact of such system anomalies and failures, and, of course, to seek to avoid consequent litigation that would surely ensue, the federal and several state governments have sought by statute to bias the delivery of

computer and information technology toward a fail-safe environment. In particular, these statutes have been designed to limit damages, to immunize states from Y2K claims, and to promote ADR and thereby avoid inundating the courts with litigation.

Federal Y2K Statute

Concern for potential Y2K problems eventually drove Congress through a political quagmire to pass a statute⁸ that purports to provide incentives for businesses and individuals to engage in remedial activities, to seek to mitigate incipient and potential damages, and to test Y2K solutions, presumably before Y2K problems develop. The Y2K Act⁹ strives to encourage businesses to approach Y2K disputes “responsibly” and expeditiously by engaging in good faith informal negotiations and ADR, thereby avoiding disruption to interstate commerce and burdening the courts with a deluge of “insubstantial” lawsuits and thus reserving the courts for lawsuits involving legitimate damage claims.¹⁰

To meet these goals, the Y2K Act attempts to broadly define a “Y2K Failure” in the context of “year-2000 date-related data” that manifests a failure of accurately processing “transitions or comparisons from, into, and between the years 1999 and 2000”¹¹; or of accurately processing “any date in either of the years 1999, 2000, or 2001”¹²; or of accurately processing Y2K leap year specific date data, e.g., “including the recognition and processing of the correct date on February 29, 2000.”¹³ The important term “processing” is construed broadly to represent instructions implemented in software or hardware to perform calculations, comparisons, sequencing, displaying, storing, transmitting, and receiving operations or procedures.¹⁴ Thus, a Y2K failure may occur in “any device or system (including any computer system and any microchip or integrated circuit embedded in another device or product), or any software, firmware, or other set or collection or processing instructions...”¹⁵

The Y2K Act applies to actions filed after January 1, 1999 and to Y2K failures occurring prior to January 1, 2003.¹⁶ It also applies to a potential Y2K failure that could occur or that has already occurred and caused harm prior to January 1, 2003.¹⁷ Excluded from the purview of the Y2K Act are causes of action claiming personal injury or wrongful death.¹⁸ The Act contemplates the strict enforcement of contractual terms¹⁹ unless such enforcement would “manifestly and directly” contravene applicable state law in effect as of January 1, 1999 specifically addressing the contractual terms in issue.²⁰ If, however, in a Y2K action, the underlying contract is silent regarding a particular issue, then interpretation is determined via applicable law in effect at the time of the execution of the contract.²¹ State doctrines of unconscionability are also enforced.²² This Section recites that no new cause of action

is created and, except as explicitly provided, nothing in the Y2K Act expands any liability otherwise imposed or limits any defense otherwise available under either federal or state law.²³

If a controversy fits in the Y2K action pigeon hole²⁴ in which alleged harm or loss arises from or is related to an actual or potential Y2K failure or a claim or defense arises from or is related to an actual or potential Y2K failure, then a prospective plaintiff must give a prospective defendant written 30-day notice of an intention to file a lawsuit and detailing the “manifestations of any material defect[s]” that allegedly caused the harm or loss, the remedial action sought, the basis for this remedial action, and contact information.²⁵ This prelitigation notice must be sent via certified mail preferably with return receipt requested²⁶ and is presumed to be received seven days after being deposited with the U.S. Postal System.²⁷ This prerequisite prelitigation notice is excluded from actions seeking only injunctive relief.²⁸

The prospective defendant has a 30-day grace period to respond to the §7 notice describing the actions taken or that are proposed to be taken to remedy the identified Y2K problem²⁹. Consistent with the purposes of this statute, the response should preferably state that the prospective defendant is willing to engage in ADR to expeditiously resolve the dispute.³⁰ Statements made in this context either in the response or during negotiations or ADR are inadmissible in evidence during any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made.³¹

Subsequent to duly tendering a §7 response, a prospective defendant then is accorded an additional 60-day remediation period to complete the proposed remedial action or ADR before the prospective plaintiff is authorized to commence litigation.³² This remediation period may be extended by written agreement.³³ If a prospective defendant has been served with a Y2K action in the absence of prelitigation § 7(a) notice or prior to the expiration of the 30-day § 7(c)(1) response period, then the complaint may be deemed to function as the prerequisite prelitigation notice by contemporaneously notifying the court and the plaintiff;³⁴ all discovery and concomitant proceedings are stayed.³⁵ As a bias toward a prospective plaintiff cooperating with a prospective defendant, the statute charges such plaintiff with a duty to mitigate damages based upon any disclosures or other information in which the plaintiff was or reasonably should have been aware.³⁶ Since this Act does not supersede any provision of the Y2K Information and Readiness Disclosure Act³⁷, it is advantageous for defendants or prospective defendants to inform customers of Y2K readiness of products and services in a sanctioned Year 2000 Readiness Disclosure.

The Y2K Act limits the availability of punitive damages, where permitted under

applicable law, to situations in which the plaintiff proves by clear and convincing evidence that punitives are merited.³⁸ Section 5 punitives are limited to the lesser of three times the amount awarded for compensatory damages or \$250,000,³⁹ with this limitation being applicable only to qualifying individuals and small businesses. Qualifying individuals are sued as individual defendants and have a net worth that does not exceed \$500,000.⁴⁰ Qualifying small businesses constitute any business entity having fewer than 50 full-time employees.⁴¹ Nevertheless, these caps on punitives do not apply if the plaintiff establishes by clear and convincing evidence that the defendant acted with specific intent to cause injury.⁴²

When tort liability is found in a Y2K action, a defendant is liable only for the portion of the adjudged damages that corresponds to the relative and proportionate responsibility of that defendant.⁴³ If, however, the trier of fact determines that the defendant acted with specific intent to cause harm to the plaintiff or knowingly committed fraud, then the liability shall be joint and several instead of being proportionate.⁴⁴ This Section further recites that more protective provisions of an applicable state statute are not preempted by the federal statute.⁴⁵

Thus, the federal Y2K Act seemingly establishes a well-developed framework for coping with an incipient, ominous complicated problem. But, unfortunately, the statute is not without its share of imperfections. For instance, the scope of the pivotal terms “year- 2000 date-related data” and “year 2000 computer-date problems” are not clearly defined. It is not obvious whether the illustrative Y2K failures recited in § 3(2) are inclusive or exclusive. No mention is made to the plethora of computer data than predates 1999; are these pre-1999 records outside the scope of the Act?

The Y2K Act imposes a heavy burden upon a prospective plaintiff: the prelitigation notice must promptly describe in detail not only the basis of and harm caused by a Y2K failure, but also that such failure was attributable to a material defect. Such material defect must substantially prevent a product or service from “operating or functioning as designed or according to its specifications.” The meaning of this key phrase — that includes a variation of commonly used implementation considerations, namely, operational design and functional specifications — is unclear. Curiously, this phrase is not repeated in the statute in the context of what material defect excludes. What if a computer program functions as designed but fails to operate according to its specifications? What if a computer program operates as designed but fails to operate as specified in a user manual? Does the term “design” have a computer industry specific meaning or is it merely synonymous with the word “implemented”? Another vulnerability of the statutory language is the use of the word “potential” in the context of a plaintiff alleging harm from an actual or potential Y2K failure or a

defendant having a defense related to or arising from an actual or potential Y2K failure. Some of these language anomalies may tend to promote rather than militate against litigation. Another perplexing aspect of this statute is the preemption of or interaction with state statutes. Since there are several vague references to state statutes throughout the Y2K Act, preemption may turn upon respective definition of key terms that provide insight into crucial scope issues.

Texas Y2K Statute

The State of Texas, on May 21, 1999, enacted a Y2K Statute that is effective September 1, 1999 and applicable to lawsuits filed thereafter.⁴⁶ With objectives similar to the Y2K Act, this statute recites a severalfold purpose: to protect and promote the well-being of the citizens, the health of the state economy, and the ability of state and local government to provide services by avoiding or mitigating Y2K problems; to establish incentives for encouraging the computer industry to effect the early identification of Y2K problems, and then to develop and implement timely solutions and to resolve disputes via ADR; to avoid burdening the judicial system with a plethora of specious lawsuits; and to preserve the rights of citizens seeking redress for bodily injury and wrongful death.⁴⁷ The statute is applicable only to actions that seek to recovery damages or any other relief for harm causally related to either a computer date failure or by a failure to properly detect, disclose, prevent, report, correct, cure, or remediate a computer date failure.⁴⁸ The vital concept of “computer date failure” is defined as “the inability to correctly process, recognize, store, receive, transmit, or in any way use date data referring to the Y2K or affected by the transition between the years 1999 and 2000, or with years expressed in a 2-digit format.”⁴⁹ It applies to the resolution of Y2K lawsuits that do not implicate death or bodily injury, workers’ compensation benefits under Texas Workers’ Compensation Laws, or the enforcement of a written contract or contractual remedies for contract breach that specifically recites provisions for liability and damages involved in a computer date failure.⁵⁰ In addition to creating neither a duty nor cause of action⁵¹, the statute neither expands nor limits the immunity of a person under any other statute providing immunity⁵², and it affect neither the coverage nor the benefits available under insurance contracts.⁵³ The statute also does not waive any immunity of the state and its political subdivisions or any employee or officer thereof.⁵⁴

The Y2K statute establishes a two-year statute of limitations for computer date failure cases, starting from the date the failure occurred and caused harm,⁵⁵ and does not extend the limitations period within which an action caused by a computer date failure may be commenced under any other law or revive a claim that is already barred by the operation of law of any other law.⁵⁶ To cut off stale claims, there is a Repose

Statute included barring claims against manufacturers or sellers of software/equipment failures older than 15 years.⁵⁷ On the other hand, if a manufacturer or seller misrepresented that a computer product or service would not manifest a computer date failure, this repose limitation is inapplicable.⁵⁸

The Y2K statute requires a prospective plaintiff to tender to a prospective defendant written 60-day notice of an intention to file a lawsuit, state contact information, and describe in “reasonable detail” the nature of the computer date failure and harm caused thereby, and the amount of damages claimed or the remedial action sought.⁵⁹ If, however, the 60-day prelitigation prerequisite would bar a prospective plaintiff from filing suit, then notice must be given within 30 days of filing suit.⁶⁰ If § 147.044 notice is not tendered, the defendant may move for the court to abate the action and require the prerequisite notice be tendered within 30 days.⁶¹ If the plaintiff fails to tender the prescribed notice, then the court shall dismiss the action.⁶²

Once a § 147.044 notice is received, the Statute enables a prospective defendant to ascertain the nature, scope, and consequences of the alleged Y2K situation by inspection of the pertinent “computer product or computer service product.”⁶³ A suitable settlement offer may then be made within the 60-day remediation period preferably cure or correct the computer date failure.⁶⁴ This offer must be accepted within 30 days or it is deemed to be rejected.⁶⁵ The rejected offer may be filed by the defendant with the court for subsequent reconciliation with damages, if any, awarded by the trier of fact.⁶⁶ This will enable the court to assess the respective good faith intentions demonstrated by the parties during negotiation and ADR, and impact the ultimate disposition of the dispute.⁶⁷

The statute provides affirmative defenses to liability that recognize certain advantageous behavior exhibited by a defendant. Thus, it is an affirmative defense to liability that the plaintiff was notified that a computer product or computer service product may manifest a computer data failure, the a cure or correction was offered, and that this cure or correction would have avoided the harm in issue.⁶⁸ Additionally, if a recent consumer product, the defendant must prove that the charge, if any, for the cure or correction did not exceed the reasonable and necessary costs to deliver and install the product or items needed to effectuate the cure for or correction of the computer date failure.⁶⁹ On the other hand, if a non-recent consumer product — either a computer product or a computer service product — then the defendant must prove that the charge, if any, for the cure or correction did not exceed the reasonable and necessary costs to develop, produce, deliver, and install the product or items needed to effectuate the cure for or correction of the computer date failure.⁷⁰ Furthermore, if the §147.081(a) cure or correction is of only limited duration, then the defendant is

accorded an affirmative defense to liability for harm caused by the computer date failure only during the duration of such cure or correction.⁷¹

The statute establishes a standard for the notice contemplated under § 147.081. In particular, this notice must identify the computer product or a computer service product that manifests or may manifest a computer date failure⁷², explain how a cure or correction therefor may be obtained,⁷³ and include a statement that this cure or correction is a solution offered to avoid harm to and could affect the recover rights of the prospective plaintiff.⁷⁴ For a recent consumer product, the § 147.081 notice must state that there is no additional charge for the cure or correction contemplated under § 147.081(b)(1);⁷⁵ or, for a non-recent consumer product, state the amount that will be charged, if any, for the cure or correction under § 147.081(b)(2).⁷⁶ As yet another prerequisite to adequate notice, such notice must be received before the beginning of the longer of the following periods: (1) within 90 days of harm being suffered from the computer date failure; or (2) the time needed to order, deliver, and install the correction before harm is borne from the computer date failure.⁷⁷ There is a rebuttable presumption that notice has been duly given a prospective plaintiff if access to the contemplated computer product or service information is available on the Year 2000 Project Office Website or toll-free telephone number.⁷⁸ Another affirmative defense established by this statute pertains to a defendants' reliance upon upstream representations. More particularly, in an action for fraud, misrepresentation, disparagement, libel, or other similar legal theory bottomed on the alleged falsity or misleading character of a computer date statement or an express warranty, it is an affirmative defense to liability that the defendant reasonably relied upon on the corresponding computer date statement or an express warranty that a computer date failure would not occur that was stated by an independent, upstream manufacturer or seller of the computer product or computer service product,⁷⁹ that this statement was false or misleading,⁸⁰ and that the defendant was devoid of actual knowledge or this falsity.⁸¹

As an incentive for prospective or actual defendants to cooperate fully with prospective or actual plaintiffs, without fear of helping develop incriminating evidence, the statute designates the following as being inadmissible for proving computer date failure liability: (1) an offer to settle under § 147.048; (2) notice under § 147.081; (3) evidence of furnishing or offering or promising to furnish a correction or cure for a present or future computer date failure; (4) a statement made in the process of correcting, curing, or attempting to correct or cure a present or future computer date failure.⁸² If, however, breach of a guarantee or warranty of the correction or cure for a computer date failure has allegedly occurred, then evidence of furnishing or offering

or promising to furnish a correction or cure for a present or future computer date failure under § 147.085(a)(3) is admissible to the extent that it is evidence of the guarantee or warranty.⁸³ Another exception to this inadmissibility rule is under circumstances in which a false § 147.085(a)(4) statement is made with knowledge of its falsity, and the statement was relied upon to the prospective or actual plaintiff's detriment.⁸⁴

Consistent with one of its primary objectives, the statute limits Y2K liability if a defendant demonstrates a good faith effort to cure or correct computer date failure problems.⁸⁵ Accordingly, damages are not recoverable for mental anguish, loss of consortium, or loss of companionship⁸⁶; (2) exemplary or punitive damages⁸⁷; (3) additional damages under § 17.50(b)(1), Business & Commerce Code⁸⁸; or (4) consequential damages⁸⁹. The exceptions to these limitations of liability require the commission of actual fraud or the specific intent to cause substantial injury.

Other State Y2K Statutes

Consider the Y2K statutes of representative other states. On April 26, 1999, Arizona enacted a Y2K statute that requires a prospective plaintiff to give a prospective defendant 90 days written notice, describing in detail the alleged Y2K failure and any damages. The defendant may offset against damages the value of a Y2K fix or any restitution paid. Where the plaintiff refused restitution or an offer of a free fix, the defendant may offset the value the plaintiff would have received. Any Y2K analyses or studies undertaken by the defendant are discoverable, but cannot be used to prove negligence.

Colorado, on April 5, 1999, enacted the Year 2000 Liability Act limiting liability and damages for Y2K failures wherein a business will not be liable for a Y2K failure if it has made "reasonable and timely" efforts to discover and repair product problems. Such reasonable efforts include taking inventory of all critical systems that might fail, preparing and implementing plans to fix or replace vulnerable systems, complying with any industry-related regulations involving Y2K, testing remediated systems, and proposing contingency plans. Liability is limited to the amount of actual damages, and bars liability against officers, directors and employees under typical circumstances.

Florida enacted the Commerce Protection Act on June 4, 1999, restricting Y2K lawsuits and limiting the damages plaintiffs can recover to direct economic damages caused by a Y2K failure unless other arrangements have been made in a contract or tariff. All lawsuits filed after January 1, 2000 must be referred to mediation prior to the filing of any answer or response, with the time to respond being tolled until either 60 days after service of process on the defendant, or the conclusion of the mediation (whichever is earlier). Liability may be avoided by disclosing to customers any Y2K

problems before Dec. 1, 1999, and then using best efforts to remedy the problems.

On April 7, 1999, Virginia enacted a statute that limits liability and damages in Y2K cases by barring liability unless the defendant has contracted with the plaintiff, made an express warranty to the plaintiff, or administers a trust for the plaintiff's benefit. It also bars liability for damages caused by a third party's Y2K problem, limits damages to actual direct damages, and does not apply to wrongful death or personal injury cases.

Conclusion

The coexistence of a federal Y2K Statute (coupled with the federal Year 2000 Information and Readiness Disclosure Act) and a mosaic of state Y2K statutes brings a convoluted legal landscape populated with uneven terrain. A careful analysis of the underlying interrelationship between the parties should help determine procedural issues including the crucial preemption issue. A consistent statutory bias is good faith disclosure of Y2K readiness and mutual efforts to use ADR to arrive at expeditious solutions and to avoid Y2K damages from being manifest because of inaction. Another complication contour is the call to insurers to engage in the Y2K front lines on behalf of the parties. Since no explicit reference is typically made to the role of insurers in the various statutes, insurers are apt to resist being drawn into the massive fray. Whether these statutes help avoid a Y2K litigation nightmare will be revealed ever so soon. Litigators and the courts will need to find the Rosetta Stone for providing a thorough understanding of the preferred procedure for parallel processing of the federal and state Y2K statutes.

1. See, e.g., *Sunquest Information Systems, Inc. v. Dean Witter Reynolds Inc.*, No. 98-188J (WD Pa, 3/24/1999) (Sunquest's claim against The Compucare Company on the basis of alleged Y2K-readiness misrepresentations dismissed because there was no reasonable reliance issue — stock purchase agreement was an integrated agreement; but same claim against Dean Witter Reynolds, as facilitator of the acquisition, allowed); *Against Gravity Apparel Inc. v. Quarterdeck Corp.*, No. 603752/98 (NY Sup.Ct., NYC 4/5/1999) (class action alleging that ProComm Plus telecommunications software knowingly marketed with Y2K defect and breaching express performance warranty dismissed because 90-day warranty period had expired); *Paragon Networks Int'l v. Macola, Inc.*, No. 9-99-2 (OH Ct. App., 3d App. Dist., Marion Cty., 4/28/1999) (dismissal of Y2K breach of warranty suit affirmed because underlying license recited a warranty disclaimer, a 90-day limited warranty, and an integration clause); *Mineral Area Osteopathic Hospital Inc., Community Memorial Healthcare Inc., and North Country Hospital, Inc. v. Keane, Inc.*, (N.D. IA, Cedar Rapids Div., complaint filed 3/21/1999) (class action alleging that Keane is "sunsetting" the non-Y2K compliant Mednet computer system by advising customers that maintenance and support would be discontinued unless user-hospitals waived all Y2K claims); *Vernis & Bowling of Miami, et al. v. Nortel Networks, Inc.*, No. 99-10186 CA 04 (FL Cir.Ct., 11th Jud.Cir., Miami-Dade Cty., complaint filed

4/26/1999) (class action alleging breach of warranty and unfair trade practices for selling non-Y2K compliant products that must be upgraded); *Johnson v. Circuit City Stores, Inc., Fry's Electronics, Inc., CompUSA Inc., Office Depot, Inc., OfficeMax, Inc.*, No. C99-00054 (CA Sup.Ct., Contra Costa Cty., 4/20/1999) (attempt to dismiss suit on the basis of failure to disclose whether products were Y2K-compliant because products are functioning properly now, i.e., prior to Y2K, denied); *Peerless Wall & Window Coverings, Inc. v. Synchronics, Inc.*, No. 98-1084 (W.D. Pa 5/3/1999) (pursuant to plaintiff seeking class action status, defendant must answer written interrogatories pertaining to its licensing of non-Y2K compliant Synchronics cash register, inventory, and accounting software when its comparable Counterpoint Y2K-compliant software was commercially available; but defendant need not provide access to its technical personnel or to 3rd-party remediation software because of undue burden and violation of software license); *Rhodes v. Omega Research, Inc.*, No. 98-0174-CIV-LENARD (S.D. Fl. 3/1/1999) (shareholder derivative action alleging that Omega and IPO underwriters failed to lack of Y2K compliance dismissed because prospectus disclosed high degree of risk).

2. The settlement will provide free Y2K compliant upgrades of DacEasy for DOS version 7 or earlier and Timeslips version 6 or earlier. Final hearing on the settlement is scheduled for October 21, 1999. Susman Godfrey is local counsel for plaintiffs.

3. *GTE Corp. v. Allendale Mutual Insurance Co., Affiliated FM Insurance Co., Allianz Insurance Co., Federal Insurance Co., Industrial risk Insurers* (D.N.J. filed 6/18/1999).

4. See, e.g., *Litigating Year 2000 Cases* by Weikers, Racho & Heicklen (West Group 1999).

5. *Legal Implications of the Millenium Bug* by Nations, Duke, and Black; see also, www.howardnations.com.

6. *Id.*, citing *Year 2000 Problem Gains National Attention*, see, www.gartner.com/aboutgg/pressrel/pry2000.html.

7. The author was such a programmer in the late 1960s and 1970s.

8. President Clinton signed H.R. 775 on July 20, 1999.

9. "Y2K Act" is the short title for Pub. L. 106-37; see, § 1(a).

10. Y2K Act § 2.

11. Y2K Act § 3(2)(A).

12. Y2K Act § 3(2)(B).

13. Y2K Act § 3(2)(C).

14. See, Y2K Act § 3(2) first paragraph.
15. Id.; a computer program executes a set of instructions implemented either in software or hardware, or both.
16. Y2K Act § 4(a).
17. Id.
18. Y2K Act § 4(c).
19. “Contracts” are construed to include contracts, tariffs, licenses, or warranties. Y2K Act § 3 (7).
20. Y2K Act § 4(d)(1); this strict enforcement even includes language limiting or excluding liability or disclaimers of warranty.
21. Y2K Act § 4(d)(2).
22. Y2K Act § 4(d)(3); this enforcement includes adhesion theories.
23. Y2K Act § 4(b).
24. Y2K Act § 3(1).
25. Y2K Act § 7(a).
26. Id.
27. Y2K Act § 7(c)(4).
28. Id.
29. This response must be sent via certified mail return receipt requested. Y2K Act § 7(c)(1).
30. Y2K Act § 7(c)(2). Similarly, the prospective plaintiff should stand ready to promptly engage in ADR. Such ADR is controlled by state statute and concomitant rules of civil procedure. See, § 7(h).
31. Y2K Act § 7(c)(3) (under Federal Rule of Evidence 408 or any analogous state rule of evidence).
32. Y2K Act § 7(e)(1).
33. Y2K Act § 7(e)(2); during the remediation period, any statute of limitation or doctrine of laches is tolled. See, § 7(e)(4).
34. Y2K Act § 7(f).

35. Y2K Act § 7(f)(1)-(2).
36. Y2K Act § 9 (damages awarded plaintiff shall exclude compensation for damages that the plaintiff could reasonably have avoided or could or should have reasonably remedied).
37. Pub. L. 105-271 enacted on October 19, 1998 pertains to any Y2K readiness information disclosed in writing directly to customers or clients or on the Web and expressly identified as a “Year 2000 Readiness Disclosure” during the period July 14, 1998 through July 1, 2001.
38. Y2K Act § 5(a).
39. Y2K Act § 5(b)(1)(A)-(B).
40. Y2K Act § 5(b)(2)(A).
41. Y2K Act § 5(b)(2)(B).
42. Y2K Act § 5(b)(3).
43. Y2K Act § 6(a) (the percentage of responsibility shall be found by the trier of fact as a percentage of the total fault of all parties, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff).
44. Y2K Act § 6(c).
45. Y2K Act § 6(g) (state statute may limit the liability of a defendant in a Y2K action to a lesser amount than the amount determined hereunder, or may afford a greater degree of protection from joint and several liability than is afforded hereunder).
46. S.B. 598. The Texas Y2K Statute is embodied in Title 6, Civil Practice and Remedies Code, Chapter 147, entitled “Year 2000 Computer Date Failure.”
47. S.B. 598. § 1(h)(1)-(5) (specious lawsuits are referred to as being “not objectively verifiable”).
48. Title 6 § 147.002.
49. Title 6 § 147.003.
50. Title 6 § 147.004.
51. Title 6 § 147.005.
52. Title 6 § 147.006.
53. Title 6 § 147.007.

54. Title 6 § 147.008.
55. Title 6 § 147.041(a) (note that the statute runs from when the harm occurred, not when the harm was discovered, i.e., there is no “discovery rule” that tolls the limitations period).
56. Title 6 § 147.041(b).
57. Title 6 § 147.042(a).
58. Title 6 § 147.042(b).
59. Title 6 § 147.044(a)-(d).
60. Title 6 § 147.044(b).
61. Title 6 § 147.046(a) (30 days accrues from the date of the order of abatement).
62. Title 6 § 147.046(b).
63. Title 6 § 147.047(a). Subparagraph b states that the inspection must be conducted in a reasonable manner and at a reasonable time and place. § 147.047(b).
64. Title 6 § 147.048(a).
65. Title 6 § 147.048(b).
66. Title 6 § 147.048(c).
67. Title 6 § 147.048(d)-(e).
68. Title 6 § 147.081(a).
69. Title 6 § 147.081(b)(1).
70. Title 6 § 147.081(b)(2).
71. Title 6 § 147.081(c).
72. Title 6 § 147.082(a)(1).
73. Title 6 § 147.082(a)(2).
74. Title 6 § 147.082(a)(4).
75. Title 6 § 147.082(a)(3)(A).

76. Title 6 § 147.082(a)(3)(B).
77. Title 6 § 147.082(b).
78. Title 6 § 147.082(d). The URL for the Year 2000 Project Office Website is www.dir.state.tx.us/y2k
79. Title 6 § 147.084(a)(1).
80. Title 6 § 147.084(a)(2).
81. Title 6 § 147.084(a)(3).
82. Title 6 § 147.085(a)(1)-(4).
83. Title 6 § 147.085(b).
84. Title 6 § 147.085(c)(1)-(3).
85. Title 6 § 147.121 (defendant must show good faith pertaining to effort to cure, correct, avoid, or mitigate possible computer data failure problems).
86. Title 6 § 147.122(a)(1).
87. Title 6 § 147.122(a)(2) (unless it is proven by clear and convincing evidence that defendant's conduct was committed with fraud or malice).
88. Title 6 § 147.122(a)(3) (unless the trier of fact finds that defendant's conduct was committed with fraud or malice).
89. Title 6 § 147.122(a)(4) (unless the consequential damages were reasonably foreseeable).