THE FEDERAL & STATE Y2K STATUTES
DISCUSSION & COMMENTARY

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Year 2K Scenario

The Year 2K scenario promises to minimally cause excitement and maximally to deliver chaos to the industries across the board. Many plaintiffs' lawyers are anxiously awaiting the floodgates to open. Indeed, some Y2K litigation has already been commenced throughout the country.[1] A fascinating 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.[2] Publishers have already published litigation guides with a panoply of forms and concomitant practice information.[3]

This anomalous situation 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 of 00, then operation of the computer may abnormally terminate or unpredictable results may occur. 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.

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[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) ();

[2] 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).

[3] See, e.g., Litigating Year 2000 Cases by Weikers, Racho& Heicklen (West Group 1999).

The leap year coding problem arises under pathological circumstances: while 00-years are ordinarily not leap years, 2000 is, indeed, a leap year. Such a leap year aberration has not occurred since 1600! Many programmers in the 1960s and 1970s were clueless about Y2K having a 29th day in February. The 1999 coding problem occurs with software that uses a year of "99" to signal when certain archived data and the like is set to expire. This was simply an "idiot-proof" convention assumed by system designers and programmers to represent the latest date (in the distant future) that could be used to as an expiration date. Depending upon the computer program code, such files may expire imminently on 9/9/99.

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, consideration should be accorded the plethora of electronic devices that routinely sustain office operations, including telephones, fax machines, copy machines, combination printer-fax-copiers. While beyond the control of a particular law firm, consideration should also be accorded office building logistics such as security-doors, burglar alarms, elevators and escalators. The potential impact of Y2K issues upon such global industries as banking, power and water supply is definitely real. Common activities such as automobile and air travel may not be "Y2K compliant" or perhaps may simply be "Y2K compliant 'with minor issues'."

There are several approaches for coping with the potential impact of Y2K fallout. Perhaps the most conservative is to simply set the system clock back 30 or 60 or 90 days, as appropriate, and observe what happens to the outside world. Any artificial dates automatically appearing on correspondence and other documents must be manually adjusted to the correct date. The brave, opposite approach is to set the system clock ahead to just prior to Y2K, and then observe if any deviations from normal office computer operations occur. Of course, all important data should be (double) backed up prior to entering this brave new world.

Following Aristotle's lead, however, the preferred approach is to strike the means by assessing Y2K susceptibility by conducting a thorough office audit, and then to take reasonable and timely

remedial action. An easy hardware solution may be to upgrade or replace computers (generally, Pentium-class processors are Y2K compliant) and related peripherals. All respectable hardware manufacturers have Web sites that provide information about Y2K, BIOS upgrades, driver updates, etc. Software should be kept current to assure Y2K compliance; vendor Web sites should be consulted to assure staying abreast of maintenance releases and the like.

Don't forget to implement a fail-safe contingency plan. Inherent in any viable contingency plan is a strong backup regimen including off-site storage of archived files.