

**(c) Government entities**

Punitive damages in a Y2K action may not be awarded against a government entity.

**(d) Institutions of higher education****(1) In general**

Subject to paragraph (2), punitive damages in a Y2K action may not be awarded against an institution<sup>1</sup> of higher education as defined in section 1001(a) of title 20.

**(2) Exception**

Paragraph (1) shall not apply to an institution of higher education if the Y2K failure in the Y2K action occurred in a computer-based student financial aid system of that institution of higher education, and the institution—

(A) has passed Y2K data exchange testing with the Department of Education; or

(B) is not or was not in the process of performing data exchange testing with the Department of Education at the time the Department terminates such testing.

(Pub. L. 106-37, §5, July 20, 1999, 113 Stat. 192; Pub. L. 106-113, div. B, §1000(a)(4) [title III, §311], Nov. 29, 1999, 113 Stat. 1535, 1501A-265.)

## AMENDMENTS

1999—Subsec. (d), Pub. L. 106-113 added subsec. (d).

**§ 6605. Proportionate liability****(a) In general**

Except in a Y2K action that is a contract action, and except as provided in subsections (b) through (g) of this section, a person against whom a final judgment is entered in a Y2K action shall be liable solely for the portion of the judgment that corresponds to the relative and proportionate responsibility of that person. In determining the percentage of responsibility of any defendant, the trier of fact shall determine that percentage as a percentage of the total fault of all persons, including the plaintiff, who caused or contributed to the total loss incurred by the plaintiff.

**(b) Proportionate liability****(1) Determination of responsibility**

In any Y2K action that is not a contract action, the court shall instruct the jury to answer special interrogatories, or, if there is no jury, the court shall make findings with respect to each defendant, including defendants who have entered into settlements with the plaintiff or plaintiffs, concerning—

(A) the percentage of responsibility, if any, of each defendant, measured as a percentage of the total fault of all persons who caused or contributed to the loss incurred by the plaintiff; and

(B) if alleged by the plaintiff, whether the defendant (other than a defendant who has entered into a settlement agreement with the plaintiff)—

(i) acted with specific intent to injure the plaintiff; or

(ii) knowingly committed fraud.

<sup>1</sup> So in original. Probably should be “institution”.

**(2) Contents of special interrogatories or findings**

The responses to interrogatories or findings under paragraph (1) shall specify the total amount of damages that the plaintiff is entitled to recover and the percentage of responsibility of each defendant found to have caused or contributed to the loss incurred by the plaintiff.

**(3) Factors for consideration**

In determining the percentage of responsibility under this subsection, the trier of fact shall consider—

(A) the nature of the conduct of each person found to have caused or contributed to the loss incurred by the plaintiff; and

(B) the nature and extent of the causal relationship between the conduct of each such person and the damages incurred by the plaintiff.

**(c) Joint liability for specific intent or fraud****(1) In general**

Notwithstanding subsection (a) of this section, the liability of a defendant in a Y2K action that is not a contract action is joint and several if the trier of fact specifically determines that the defendant—

(A) acted with specific intent to injure the plaintiff; or

(B) knowingly committed fraud.

**(2) Fraud; recklessness****(A) Knowing commission of fraud described**

For purposes of subsection (b)(1)(B)(ii) of this section and paragraph (1)(B) of this subsection, a defendant knowingly committed fraud if the defendant—

(i) made an untrue statement of a material fact, with actual knowledge that the statement was false;

(ii) omitted a fact necessary to make the statement not be misleading, with actual knowledge that, as a result of the omission, the statement was false; and

(iii) knew that the plaintiff was reasonably likely to rely on the false statement.

**(B) Recklessness**

For purposes of subsection (b)(1)(B) of this section and paragraph (1) of this subsection, reckless conduct by the defendant does not constitute either a specific intent to injure, or the knowing commission of fraud, by the defendant.

**(3) Right to contribution not affected**

Nothing in this section affects the right, under any other law, of a defendant to contribution with respect to another defendant found under subsection (b)(1)(B) of this section, or determined under paragraph (1)(B) of this subsection, to have acted with specific intent to injure the plaintiff or to have knowingly committed fraud.

**(d) Special rules****(1) Uncollectible share****(A) In general**

Notwithstanding subsection (a) of this section, if, upon motion made not later than 6

months after a final judgment is entered in any Y2K action that is not a contract action, the court determines that all or part of the share of the judgment against a defendant for compensatory damages is not collectible against that defendant, then each other defendant in the action is liable for the uncollectible share as follows:

**(i) Percentage of net worth**

The other defendants are jointly and severally liable for the uncollectible share if the plaintiff establishes that—

(I) the plaintiff is an individual whose recoverable damages under the final judgment are equal to more than 10 percent of the net worth of the plaintiff; and

(II) the net worth of the plaintiff is less than \$200,000.

**(ii) Other plaintiffs**

For a plaintiff not described in clause (i), each of the other defendants is liable for the uncollectible share in proportion to the percentage of responsibility of that defendant.

**(iii) Additional liability**

For a plaintiff not described in clause (i), in addition to the share identified in clause (ii), the defendant is liable for an additional portion of the uncollectible share in an amount equal to 50 percent of the amount determined under clause (ii) if the plaintiff demonstrates by a preponderance of the evidence that the defendant acted with reckless disregard for the likelihood that its acts would cause injury of the sort suffered by the plaintiff.

**(B) Overall limit**

The total payments required under subparagraph (A) from all defendants may not exceed the amount of the uncollectible share.

**(C) Subject to contribution**

A defendant against whom judgment is not collectible is subject to contribution and to any continuing liability to the plaintiff on the judgment.

**(D) Suits by consumers**

(i) Notwithstanding subparagraph (A), the other defendants are jointly and severally liable for the uncollectible share if—

(I) the plaintiff is a consumer whose suit alleges or arises out of a defect in a consumer product; and

(II) the plaintiff is suing as an individual and not as part of a class action.

(ii) In this subparagraph:

(I) The term “class action” means—

(aa) a single lawsuit in which: (1) damages are sought on behalf of more than 10 persons or prospective class members; or (2) one or more named parties seek to recover damages on a representative basis on behalf of themselves and other unnamed parties similarly situated; or

(bb) any group of lawsuits filed in or pending in the same court in which: (1) damages are sought on behalf of more

than 10 persons; and (2) the lawsuits are joined, consolidated, or otherwise proceed as a single action for any purpose.

(II) The term “consumer” means an individual who acquires a consumer product for purposes other than resale.

(III) The term “consumer product” means any personal property or service which is normally used for personal, family, or household purposes.

**(2) Special right of contribution**

To the extent that a defendant is required to make an additional payment under paragraph (1), that defendant may recover contribution—

(A) from the defendant originally liable to make the payment;

(B) from any other defendant that is jointly and severally liable;

(C) from any other defendant held proportionately liable who is liable to make the same payment and has paid less than that other defendant’s proportionate share of that payment; or

(D) from any other person responsible for the conduct giving rise to the payment that would have been liable to make the same payment.

**(3) Nondisclosure to jury**

The standard for allocation of damages under subsection (a) of this section and subsection (b)(1) of this section, and the procedure for reallocation of uncollectible shares under paragraph (1) of this subsection, shall not be disclosed to members of the jury.

**(e) Settlement discharge**

**(1) In general**

A defendant who settles a Y2K action that is not a contract action at any time before final verdict or judgment shall be discharged from all claims for contribution brought by other persons. Upon entry of the settlement by the court, the court shall enter an order constituting the final discharge of all obligations to the plaintiff of the settling defendant arising out of the action. The order shall bar all future claims for contribution arising out of the action—

(A) by any person against the settling defendant; and

(B) by the settling defendant against any person other than a person whose liability has been extinguished by the settlement of the settling defendant.

**(2) Reduction**

If a defendant enters into a settlement with the plaintiff before the final verdict or judgment, the verdict or judgment shall be reduced by the greater of—

(A) an amount that corresponds to the percentage of responsibility of that defendant; or

(B) the amount paid to the plaintiff by that defendant.

**(f) General right of contribution**

**(1) In general**

A defendant who is jointly and severally liable for damages in any Y2K action that is not

a contract action may recover contribution from any other person who, if joined in the original action, would have been liable for the same damages. A claim for contribution shall be determined based on the percentage of responsibility of the claimant and of each person against whom a claim for contribution is made.

**(2) Statute of limitations for contribution**

An action for contribution in connection with a Y2K action that is not a contract action shall be brought not later than 6 months after the entry of a final, nonappealable judgment in the Y2K action, except that an action for contribution brought by a defendant who was required to make an additional payment under subsection (d)(1) of this section may be brought not later than 6 months after the date on which such payment was made.

**(g) More protective State law not preempted**

Nothing in this section preempts or supersedes any provision of State law that—

- (1) limits the liability of a defendant in a Y2K action to a lesser amount than the amount determined under this section; or
- (2) otherwise affords a greater degree of protection from joint or several liability than is afforded by this section.

(Pub. L. 106-37, § 6, July 20, 1999, 113 Stat. 192.)

**§ 6606. Prelitigation notice**

**(a) In general**

Before commencing a Y2K action, except an action that seeks only injunctive relief, a prospective plaintiff in a Y2K action shall send a written notice by certified mail (with either return receipt requested or other means of verification that the notice was sent) to each prospective defendant in that action. The notice shall provide specific and detailed information about—

- (1) the manifestations of any material defect alleged to have caused harm or loss;
- (2) the harm or loss allegedly suffered by the prospective plaintiff;
- (3) how the prospective plaintiff would like the prospective defendant to remedy the problem;
- (4) the basis upon which the prospective plaintiff seeks that remedy; and
- (5) the name, title, address, and telephone number of any individual who has authority to negotiate a resolution of the dispute on behalf of the prospective plaintiff.

**(b) Person to whom notice to be sent**

The notice required by subsection (a) of this section shall be sent—

- (1) to the registered agent of the prospective defendant for service of legal process;
- (2) if the prospective defendant does not have a registered agent, then to the chief executive officer if the prospective defendant is a corporation, to the managing partner if the prospective defendant is a partnership, to the proprietor if the prospective defendant is a sole proprietorship, or to a similarly-situated person if the prospective defendant is any other enterprise; or

(3) if the prospective defendant has designated a person to receive prelitigation notices on a Year 2000 Internet Website (as defined in section 3(7) of the Year 2000 Information and Readiness Disclosure Act), to the designated person, if the prospective plaintiff has reasonable access to the Internet.

**(c) Response to notice**

**(1) In general**

Within 30 days after receipt of the notice specified in subsection (a) of this section, each prospective defendant shall send by certified mail with return receipt requested to each prospective plaintiff a written statement acknowledging receipt of the notice, and describing the actions it has taken or will take to address the problem identified by the prospective plaintiff.

**(2) Willingness to engage in ADR**

The written statement shall state whether the prospective defendant is willing to engage in alternative dispute resolution.

**(3) Inadmissibility**

A written statement required by this subsection is not admissible in evidence, under Rule 408 of the Federal Rules of Evidence or any analogous rule of evidence in any State, in any proceeding to prove liability for, or the invalidity of, a claim or its amount, or otherwise as evidence of conduct or statements made in compromise negotiations.

**(4) Presumptive time of receipt**

For purposes of paragraph (1), a notice under subsection (a) of this section is presumed to be received 7 days after it was sent.

**(5) Priority**

A prospective defendant receiving more than one notice under this section may give priority to notices with respect to a product or service that involves a health or safety related Y2K failure.

**(d) Failure to respond**

If a prospective defendant—

- (1) fails to respond to a notice provided pursuant to subsection (a) of this section within the 30 days specified in subsection (c)(1) of this section; or
- (2) does not describe the action, if any, the prospective defendant has taken, or will take, to address the problem identified by the prospective plaintiff,

the prospective plaintiff may immediately commence a legal action against that prospective defendant.

**(e) Remediation period**

**(1) In general**

If the prospective defendant responds and proposes remedial action it will take, or offers to engage in alternative dispute resolution, then the prospective plaintiff shall allow the prospective defendant an additional 60 days from the end of the 30-day notice period to complete the proposed remedial action or alternative dispute resolution before commencing a legal action against that prospective defendant.