

**(b) Nature and amount of damages**

In all Y2K actions in which damages are requested, there shall be filed with the complaint a statement of specific information as to the nature and amount of each element of damages and the factual basis for the damages calculation.

**(c) Material defects**

In any Y2K action in which the plaintiff alleges that there is a material defect in a product or service, there shall be filed with the complaint a statement of specific information regarding the manifestations of the material defects and the facts supporting a conclusion that the defects are material.

**(d) Required state of mind**

In any Y2K action in which a claim is asserted on which the plaintiff may prevail only on proof that the defendant acted with a particular state of mind, there shall be filed with the complaint, with respect to each element of that claim, a statement of the facts giving rise to a strong inference that the defendant acted with the required state of mind.

(Pub. L. 106-37, §8, July 20, 1999, 113 Stat. 198.)

## REFERENCES IN TEXT

Rules of Federal civil procedure, referred to in subsec. (a), are contained in the Federal Rules of Civil Procedure which are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

**§ 6608. Duty to mitigate****(a) In general**

Damages awarded in any Y2K action shall exclude compensation for damages the plaintiff could reasonably have avoided in light of any disclosure or other information of which the plaintiff was, or reasonably should have been, aware, including information made available by the defendant to purchasers or users of the defendant's product or services concerning means of remedying or avoiding the Y2K failure involved in the action.

**(b) Preservation of existing law**

The duty imposed by this section is in addition to any duty to mitigate imposed by State law.

**(c) Exception for intentional fraud**

Subsection (a) does not apply to damages suffered by reason of the plaintiff's justifiable reliance upon an affirmative material misrepresentation by the defendant, made by the defendant with actual knowledge of its falsity, concerning the potential for Y2K failure of the device or system used or sold by the defendant that experienced the Y2K failure alleged to have caused the plaintiff's harm.

(Pub. L. 106-37, §9, July 20, 1999, 113 Stat. 198.)

**§ 6609. Application of existing impossibility or commercial impracticability doctrines**

In any Y2K action for breach or repudiation of contract, the applicability of the doctrines of impossibility and commercial impracticability shall be determined by the law in existence on January 1, 1999. Nothing in this chapter shall be

construed as limiting or impairing a party's right to assert defenses based upon such doctrines.

(Pub. L. 106-37, §10, July 20, 1999, 113 Stat. 199.)

**§ 6610. Damages limitation by contract**

In any Y2K action for breach or repudiation of contract, no party may claim, or be awarded, any category of damages unless such damages are allowed—

- (1) by the express terms of the contract; or
- (2) if the contract is silent on such damages, by operation of State law at the time the contract was effective or by operation of Federal law.

(Pub. L. 106-37, §11, July 20, 1999, 113 Stat. 199.)

**§ 6611. Damages in tort claims****(a) In general**

A party to a Y2K action making a tort claim, other than a claim of intentional tort arising independent of a contract, may not recover damages for economic loss unless—

- (1) the recovery of such losses is provided for in a contract to which the party seeking to recover such losses is a party; or
- (2) such losses result directly from damage to tangible personal or real property caused by the Y2K failure involved in the action (other than damage to property that is the subject of the contract between the parties to the Y2K action or, in the event there is no contract between the parties, other than damage caused only to the property that experienced the Y2K failure),

and such damages are permitted under applicable Federal or State law.

**(b) Economic loss**

For purposes of this section only, and except as otherwise specifically provided in a valid and enforceable written contract between the plaintiff and the defendant in a Y2K action, the term "economic loss" means amounts awarded to compensate an injured party for any loss, and includes amounts awarded for damages such as—

- (1) lost profits or sales;
- (2) business interruption;
- (3) losses indirectly suffered as a result of the defendant's wrongful act or omission;
- (4) losses that arise because of the claims of third parties;
- (5) losses that must be pled as special damages; and
- (6) consequential damages (as defined in the Uniform Commercial Code or analogous State commercial law).

**(c) Certain other actions**

A person liable for damages, whether by settlement or judgment, in a civil action to which this chapter does not apply because of section 6603(c) of this title whose liability, in whole or in part, is the result of a Y2K failure may, notwithstanding any other provision of this chapter, pursue any remedy otherwise available under Federal or State law against the person responsible for that Y2K failure to the extent of recovering the amount of those damages.