

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.

(Pub. L. 106-37, §12, July 20, 1999, 113 Stat. 199.)

**§ 6612. State of mind; bystander liability; control**

**(a) Defendant’s state of mind**

In a Y2K action other than a claim for breach or repudiation of contract, and in which the defendant’s actual or constructive awareness of an actual or potential Y2K failure is an element of the claim, the defendant is not liable unless the plaintiff establishes that element of the claim by the standard of evidence under applicable State law in effect on the day before January 1, 1999.

**(b) Limitation on bystander liability for Y2K failures**

**(1) In general**

With respect to any Y2K action for money damages in which—

- (A) the defendant is not the manufacturer, seller, or distributor of a product, or the provider of a service, that suffers or causes the Y2K failure at issue;
- (B) the plaintiff is not in substantial privity with the defendant; and
- (C) the defendant’s actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law,

the defendant shall not be liable unless the plaintiff, in addition to establishing all other

requisite elements of the claim, proves, by the standard of evidence under applicable State law in effect on the day before January 1, 1999, that the defendant actually knew, or recklessly disregarded a known and substantial risk, that such failure would occur.

**(2) Substantial privity**

For purposes of paragraph (1)(B), a plaintiff and a defendant are in substantial privity when, in a Y2K action arising out of the performance of professional services, the plaintiff and the defendant either have contractual relations with one another or the plaintiff is a person who, prior to the defendant’s performance of such services, was specifically identified to and acknowledged by the defendant as a person for whose special benefit the services were being performed.

**(3) Certain claims excluded**

For purposes of paragraph (1)(C), claims in which the defendant’s actual or constructive awareness of an actual or potential Y2K failure is an element of the claim under applicable law do not include claims for negligence but do include claims such as fraud, constructive fraud, breach of fiduciary duty, negligent misrepresentation, and interference with contract or economic advantage.

**(c) Control not determinative of liability**

The fact that a Y2K failure occurred in an entity, facility, system, product, or component that was sold, leased, rented, or otherwise within the control of the party against whom a claim is asserted in a Y2K action shall not constitute the sole basis for recovery of damages in that action. A claim in a Y2K action for breach or repudiation of contract for such a failure is governed by the terms of the contract.

**(d) Protections of the Year 2000 Information and Readiness Disclosure Act apply**

The protections for the exchanges of information provided by section 4 of the Year 2000 Information and Readiness Disclosure Act (Public Law 105-271) shall apply to any Y2K action.

(Pub. L. 106-37, §13, July 20, 1999, 113 Stat. 200.)

REFERENCES IN TEXT

Section 4 of the Year 2000 Information and Readiness Disclosure Act, referred to in subsec. (d), is section 4 of Pub. L. 105-271, which was formerly set out in a note under section 1 of this title.

**§ 6613. Appointment of special masters or magistrate judges for Y2K actions**

Any district court of the United States in which a Y2K action is pending may appoint a special master or a magistrate judge to hear the matter and to make findings of fact and conclusions of law in accordance with Rule 53 of the Federal Rules of Civil Procedure.

(Pub. L. 106-37, §14, July 20, 1999, 113 Stat. 201.)

REFERENCES IN TEXT

Rule 53 of the Federal Rules of Civil Procedure, referred to in text, is set out in the Appendix to Title 28, Judiciary and Judicial Procedure.