

cedure 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.

(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 without 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.)

Editorial Notes

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.)

Editorial Notes

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.

§ 6614. Y2K actions as class actions

(a) Material defect requirement

A Y2K action involving a claim that a product or service is defective may be maintained as a class action in Federal or State court as to that claim only if—

(1) it satisfies all other prerequisites established by applicable Federal or State law, including applicable rules of civil procedure; and

(2) the court finds that the defect in a product or service as alleged would be a material defect for the majority of the members of the class.

(b) Notification

In any Y2K action that is maintained as a class action, the court, in addition to any other notice required by applicable Federal or State law, shall direct notice of the action to each member of the class, which shall include—

(1) a concise and clear description of the nature of the action;

(2) the jurisdiction where the case is pending; and

(3) the fee arrangements with class counsel, including the hourly fee being charged, or, if it is a contingency fee, the percentage of the final award which will be paid, including an estimate of the total amount that would be paid if the requested damages were to be granted.

(c) Forum for Y2K class actions

(1) Jurisdiction

Except as provided in paragraph (2), the district courts of the United States shall have original jurisdiction of any Y2K action that is brought as a class action.

(2) Exceptions

The district courts of the United States shall not have original jurisdiction over a Y2K action brought as a class action if—

(A)(i) a substantial majority of the members of the proposed plaintiff class are citizens of a single State;

(ii) the primary defendants are citizens of that State; and

(iii) the claims asserted will be governed primarily by the laws of that State;

(B) the primary defendants are States, State officials, or other governmental entities against whom the district courts of the United States may be foreclosed from ordering relief;

(C) the plaintiff class does not seek an award of punitive damages, and the amount in controversy is less than the sum of \$10,000,000 (exclusive of interest and costs), computed on the basis of all claims to be determined in the action; or

(D) there are less than 100 members of the proposed plaintiff class.

A party urging that any exception described in subparagraph (A), (B), (C), or (D) applies to an action shall bear the full burden of demonstrating the applicability of the exception.

(3) Procedure if requirements not met

(A) Dismissal or remand

A United States district court shall dismiss, or, if after removal, strike the class al-