

## Y2K: WHAT DO I TELL MY CLIENTS?

*Bart Mindszenty and John Newton*



Y2K is a conundrum. More knowledge does not seem to result in greater confidence. Some say the issue is overblown, others head to remote survival camps, and many just get on with daily business, not knowing quite what to do. The headlines often appear contradictory, as do the letters, questionnaires and status reports that are increasing. They are all speculating about, addressing key issues, and reporting on what is commonly referred to as "the Y2K problem."

In the financial sector OSFI, OSC, and CSA are asking questions, and setting reporting dates (June 30, 1999) for corporate disclosure and due diligence. In the U.S., legislation is in the works to shield firms from Y2K suits. Sen. John McCain (Republican-Arizona), chief sponsor of legislation that seeks to limit litigation resulting from the so-called Y2K computer problem, feels, "The potential drain on the nation's economy and the world economy is staggering." One commonly cited estimate puts the litigation from Y2K at \$1 trillion, far exceeding damages sought in breast implant or asbestos lawsuits. The Association of Trial Lawyers of America opposes McCain's bill arguing it sets a dangerous precedent in limiting damage awards at \$250,000 (U.S.), and allowing companies to avoid paying computer failure repairs.

Consequently, corporations, governments, and individuals are taking action. Some are concerned; others are attempting to deal with the potential implications of Y2K. What does this all mean for the legal and insurance communities? In two words – uncertainty and communication. In this article we'll address the overall Y2K issue with emphasis on communication, the third wave in risk management, after data correction and contingency planning.

Y2K is not a surprise. It is only surprising that it has taken so long for the Y2K problem to become recognized for what it is: one of the major potential societal messes of the century. The Y2K problem was identified in the 1970s, yet even in the early 1990s relatively few companies or governments were taking it seriously. Among the first to act were insurance companies and banks, recognizing the serious negative impact of what started 40 years ago as a reasonable space-saving, cost-cutting decision. On the legal front, the Canadian Bar Association has already identified 128 specific legal topics surrounding the Y2K problem and this list will grow as litigation is settled in court and legal precedents set.

Now, we are only a handful of months away from what many executives think of as that fateful January 1, 2000 date with destiny. In point of fact, that January 1 date is actually misleading as only about 10% of the potential problems are thought to be associated with the actual rollover. Date-related issues will be occurring a number of times throughout 1999 and well into 2002. But the January 1st date... what's being erroneously hailed as the start of the new millennium... has a certain cache and allure that creates a natural focal point for us all.

So, what is really going on? How concerned should you be? What does it mean to your business? Do you have a role to play in Y2K? What do you tell your clients?

### Just the Facts, Please.

A good starting point is to review a few facts.

**Fact #1:** There are several million mainframe and personal computers, most of which are vulnerable to the Millennium Bug.

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## QUOTABLE QUOTE

*"The trouble is, unlike normal preparation for a major crisis, with Y2K we know exactly when things will happen, but we do not know for certain what will happen. We can anticipate and prepare contingencies, but the truth is, we will not know for certain what will or may happen until it does."*

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## DID YOU KNOW...

According to leading Y2K industry analyst, Casper Jones of Software Productivity Research Inc of Burlington, MA, failure to address and treat the Y2K problem could damage or even end the careers of about half of the senior executives in the United States.

**Fact #2:** There are countless complex software programs being used in large organizations around the world, and many of them have been modified and altered so many times over the years – and thus called “Spaghetti Code” – that it is difficult to find all Y2K related problems.

**Fact #3:** The average software development company eliminates only 85% of the “bugs” in any of its programs. According to Caspers Jones, Chairman of Software Productivity Research, that percentage should be about the same for catching Y2K-related threats. “Corrected” code may still have date-related errors.

**Fact #4:** Compounding the potential for problems are the billions of embedded chips now used in everything from alarm systems to medical devices, and an unknown number of them are date-sensitive. “Of four pacemakers approved, two are not compliant,” Mark Grundy, an attorney with Greenebaum, Doll & McDonald PLLC said. “If anything has been overlooked, it is the embedded chip issue.”

**Fact #5:** Y2K litigation has started. According to Cindy Stewart, a corporate lawyer for Brown, Todd & Heyburn PLLC, who has been spending considerable time with the Y2K issue, there hasn't been a major drive for lawsuits yet. “There have been about 60 to 70 cases filed nationwide [U.S.], largely by people who owned software and are suing a vendor for relief,” Stewart said. So far, the lawsuits have not had the primary purpose of collecting damages, according to Stewart. Plaintiffs generally want Y2K compliant software to ensure the continuity of their critical business

operations. Gary Greenberg, an attorney at Goldstein & Manello in Boston, observed that, “In the future you're going to be dealing with losses or damages, but for now these suits are about ways to minimize those losses.”

**Fact #6:** There are documented reports of Y2K problems already taking place. In 1993, education officials in Minnesota instructed 104 year old Mary Bandar to report to kindergarten as computers considered her to be 4 years old. In Britain, Marks & Spencer discarded \$3 million of corned beef thought to be 94 years old. More recently, due to the 1999 roll-over, computers failed at police offices in three Swedish airports, and computerized taxi meters went dead in Singapore. All because the “99” and “999” codes in many computers are a special instruction to stop functioning or delete a file.

**Fact #7:** Research\* shows that there are high probabilities of a range of glitches occurring directly as a result of the Y2K problem. For example, the probability of a Y2K-related problem with credit reports is estimated at 70%; for loss of local hydro for less than a day, 55%; of regional hydro for less than a day, 40%; loss of international phone services for some period of time, 35%; errors in year 2000 tax reporting, 35%; errors in the first pay cheques in January, 2000, 30%; some delays/cancellations of airline flights, 25%; errors with motor vehicle records, 20%; medical/hospital billing errors, 20%; errors in bank account balances, 15%; and errors in hotel/motel reservations, 12%.

\* *Technical paper, Software Productivity Research, Burlington, Mass.*

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