

**TESTIMONY BEFORE THE HOUSE  
JUDICIARY COMMITTEE**

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Good Morning. Let me begin by thanking Representative Gannon and the other members of the House Judiciary Committee for holding hearings on what may be the most critical issue of our time; the Year 2000 computer issue.

Let me begin my remarks today, in that I am the first speaker, by providing a very simple definition and overview of the Year 2000 problem. Many computers on January 1, 2000 and even as early as January 1, 1999 will not be able to recognize a double "00" or "99" as a correct date because the programming language will not accept those numbers as a date. The failure to recognize those numbers as a date will cause the computer to cease to function and/or to lose data.

Clearly, the biggest issue those of us who care about this issue and its effects face is communicating the reality of the problem, the need to act now to fix or remediate the problem and the scope, magnitude and urgency of the problem.

While I have devoted a considerable amount of time and resources to learning about the Year 2000 Problem and its wide spread legal, business and technological ramifications as a Partner and Chairperson of my law firms Year 2000 Practice Group and pursuant to the rendering of advice to clients, my opinions, while well considered may not carry as much weight with this esteemed committee if they did not echo the opinions of other experts considering this issue. For that reason, let me take a few moments of my testimony to review with you what the experts are saying in regard to the Year 2000 issue and its ramifications.

1. "I can no longer say with any confidence that there is enough time to avoid a severe global Y2K recession." Edward Yardeni, Chief Economist at Deutsche Bank Securities, named by the Wall Street Journal as the top U.S. economic forecaster in 1997.
2. "The probability of a recession has increased to 70 percent." Edward Yardeni.

3. The watchdog of the computer industry, the Gartner Group, conservatively estimates that 50 billion computer chips will fail as a result of the Year 2000 problem. (The Gartner Group is the world's largest information technology research and advisory firm).
4. United States Senator Christopher "Kit" Bond, chairman of the Senate Small Business Committee said in May of 1998: "We have found there is significant likelihood that the Y2K issue will affect many small businesses and will most likely cause many small businesses to close, playing a larger role in Federal Reserve Chairman Alan Greenspan's prediction of a 40% chance for recession."
5. The Gartner Group estimates that only 50% of enterprises worldwide will reach operational sustainability by the year 2000.
6. The Giga Information Group projects legal damages will be more than \$1 trillion worldwide.
7. Computer World Magazine randomly tested 500 personal computers for Year 2000 readiness this Spring. The magazine said 47% flunked; including 9 out of 10 designed before 1997.
8. Fixing lines of code in main frame computers with millions of lines of code written in COBOL can cost anywhere from 40 cents to \$1.00 per line of code.
9. The Giga Information Group estimates that up to 70% of PC's might need help rolling over to the Year 2000.
10. "The Gartner Group, a consulting company that advised nearly 12,000 clients about the Year 2000 problem, surveyed 2,300 companies in 17 countries and found that nearly 30% of these companies had not started to address the Year 2000 problem." "Squashing the Millennium Bug," The Orlando Business Journal, March 16, 1998."
11. "The Year 2000 issue is not an industry scam created to sell more hardware, software and services." "Year 2000: A Business Issue," Alan R. Arnold, Senior Manager, Ernst and Young.
12. "CIA Director George Tenet warned, in testimony before the Senate Governmental Affairs Committee, that the Year 2000 computer glitch could help adversaries penetrate critical U.S. business, government and defense computers. Because companies and the government must open their systems to repair, the so-called Y2K bug 'provides all kinds of opportunities for someone with hostile intent' to gain information – or plant viruses, he said. One CIA concern: Many of the programmers working on the problem are

non-Americans and the programs are foreign-produced.” USA Today, June 6, 1998.

13. “There are more than \$1 trillion in global foreign exchange transactions a day, and more than 80% involve the U.S. dollar.” Representative John LaFalce, D-NY quoted in USA Today, June 24, 1998.
14. “An internal memo from the Health Care Financing Administration (HCFA), which runs the health program for the elderly, may ask Congress to let it delay payment increases for the year 2000. It also may seek to postpone new reimbursement schemes for homecare agencies and outpatient facilities. The changes, required under the budget law, might have to be put off because Medicare’s computers will be tied up with a Year 2000 overhaul, according to the memo written by administrator Nancy Ann DeParle and released Friday by the House Ways and Means Subcommittee on Health.” The Wall Street Journal, June 29, 1998.
15. “The Year 2000 computer problem facing the Medicare program is among the most complex in the federal government. HCFA, which sets Medicare policies, relies on 60 contractors to operate and maintain databases and software programs that process 900 million payments each year for nearly 33 million Medicare beneficiaries who make fee-for-service claims. The contractors, primarily health insurance companies, operate seven different systems, with more than 22 million lines of software code, that use dates to make treatment and billing calculations.” The Washington Post, June 28, 1998.
16. “Gartner Group in Stamford, Connecticut, estimates corporations and governments will spend \$600 billion to fix the Y2K mess worldwide. Much of the job involves searching through thousands of lines of code to fix two-digit dates affecting critical business functions – such as interest calculations or safety inspections.” Business Week, June 29, 1998.
17. “The United Nations has adopted a resolution urging all countries to attach a high priority to solving Y2K problems.” USA Today, July 1, 1998.
18. “A survey of businesses, government agencies and information technology researchers in 16 countries suggests many nations are only now waking up to the problem.” Baltimore Sun, July 6, 1998.
19. “If we have everything fixed in the United States but there’s major disruption in Europe and total calamity in Asia and Latin America, we’re going to be affected in a very, very adverse fashion.” Edward Yardeni, Baltimore Sun, July 6, 1998.

20. "Experts say laggards include Germany, Japan and Russia, major players in a closely inter-twined global economy that is due for a shock when an unknown number of computer systems and integrated circuits lose track of time." Baltimore Sun, July 6, 1998.
21. "I think it's going to be nearly impossible to make a phone call from the United States to Korea, Indonesia, Malaysia, maybe even Japan in the first days of 2000." Edward Yardeni, Baltimore Sun, July 6, 1998.
22. "A survey by the Gartner Group found that half of 6,000 companies in 47 countries will not have at least 20 percent of their mission-critical systems fixed and tested in time for 2000. Most were small companies likely to be suppliers of larger companies." Baltimore Sun, July 6, 1998.
23. "An estimated \$3 trillion is transferred electronically every day on global markets, where a computer glitch can be costly. The London Stock Exchange is thus demanding stringent Year 2000 compliance of anyone with whom it does electronic business." Baltimore Sun, July 6, 1998.
24. "One of Russia's most sensitive industries seems not even to understand the issue. 'We don't have any problem yet,' the Atomic Energy Ministry's spokesman, Vladislav Petrov, said. 'We'll deal with the problem in the year 2000.'" Baltimore Sun, July 6, 1998.

On June 2, 1998 the Center for Strategic and International Studies held a conference in Washington, D.C. regarding the Year 2000 computer problem. One of the featured speakers was United States Senator Robert Bennett, Republican from Utah, and chair of the new Senate Select Committee on the Year 2000 Computer Technology Problem. Senator Bennett began his remarks with a story which artfully describes the scope and severity of the Year 2000 problem. I would like to play a small portion of Senator Bennett's remarks for the committee now.

[Videotape of C-Span presentation of "Year 200 Computer Problems" presented by the Center for Strategic and International Studies in Washington, D.C. on June 2, 1998]

The Year 2000 problem is not only a company, local, state, and national concern; but also a global one. The strategy must first be to communicate the problem, which this hearing hopefully will assist in accomplishing.

Second, each individual entity must fix their own house or internal computer systems whether they be a sole proprietorship, a mom & pop company, a local government, the Commonwealth of Pennsylvania, a large Pittsburgh corporation, or a multinational conglomerate.

Third, each entity must encourage, nudge and demand that all of the entities with whom they do business including suppliers, vendors and customers become Y2K compliant. This includes government. Therefore, the citizens must demand that the governmental units, by whom they are governed, including local, state and federal agencies are Y2K compliant.

And fourth, corporations and the federal government must work with foreign corporations and governments to demand their compliance because we are interconnected as a globe; perhaps more than any one of us have taken the time to realize.

Failure to follow this four step strategy will lead us all to uncertainty with minor disruptions at the least or wholesale panic and collapse at the worst.

The effect that panic, prior to the advent of the real problem on January 1, 2000, can have on the populace was theatrically portrayed in the film "It's a Wonderful Life" when George Baily, on his wedding day, is summoned away from his honeymoon because of a run on the Baily Brother Building & Loan. In this scene, Jimmy Stewart, from Indiana, Pennsylvania, displays reason, logic and candor which saves the Building and Loan and his depositors savings.

[Videotape of a scene from the film "It's a Wonderful Life"]

"We can get through this thing all right. We've got to stick together and have faith in each other."

That concludes that portion of my remarks which provided an overview of the problems we as a society are facing. This is an opportune time for me to issue a personal bias disclaimer. Although it has been widely circulated in the press that lawyers are relishing the opportunity to "make a bundle" on the inevitable litigation explosion that will result from Y2k based failures, let me state on the record I do not relish a global financial collapse or massive interruptions in the food supply. Although I may be a lawyer, I am first a mother of 2 small children, a wife, a United States citizen and a resident of the Commonwealth. And in fact, when advising my clients on this issue the clear theme of my advice is that litigation will be meaningless in the face of widespread catastrophe for obvious reasons.

In regard, to the Y2K issue, one of the responses state governments are proposing is to immunize state or commonwealth agencies and employees and sometimes others for any damages that may be

caused by the Y2K problem. I was kindly invited here today to testify in regard to pending House Bills 2273; titled "Immunity for certain erroneous computer information" [Section 42 Pa.C.S.A. 8531] and 2406; titled "Certain computer problems" [Section 42 Pa.C.S.A. 8503].

I have four (4) comments I would like to make in regard to the proposed legislation:

ONE: The Commonwealth of Pennsylvania, as the sovereign, has immunity from lawsuits unless it specifically waives its immunity from lawsuits. Up until 1980, the Commonwealth enjoyed immunity from all suits until the legislature deemed it good public policy to enact certain well defined exceptions to its immunity. Those exceptions are contained in 42 Pa.C.S.A. 8522. A fair reading of the current exceptions, in my opinion, would allow no lawsuit to proceed as a result of damages that may occur as a result of the failure of a computer to properly read the correct date. Therefore, I question the necessity of House Bill 8531 because I believe the current rule of law that grants sovereign immunity absent an exception is sufficient to protect the commonwealth, its agencies and its employees.

However, if in the interest of prudence or caution it is the desire of the legislature to clarify the exceptions to immunity contained in Section 8522; proposed Section 8531 should be changed to be an additional paragraph © at the end of current Section 8522 with some changes.

POINT TWO: Proposed House Bill 8531 seeks to immunize more than the Commonwealth, its agencies, and its employees. Section (a) titled, "General rule", immunizes an entity called an "immune contractor" The bill itself does not define "immune contractor", nor did my legal research find this term in any Pennsylvania statute or case. The obvious queries are: 1.) What is an immune contractor?; 2.) Is this entity only a company that contracts with the Commonwealth?; 3.) Who will decide who is immune?; 4.) Why are companies that do not win favorable contracts with the Commonwealth subject to lawsuits for Y2K failures but not companies that do business with the Commonwealth?; 5.) Why do companies, who may have acted in bad faith, by failing to exercise reasonable business judgment by fixing their Y2K problems, receive immunity as an immune contractor, when other companies that devoted considerable resources to the issue receive no immunity?; 6.) Does this proposed bill prevent the Commonwealth from suing "immune contractors" for damages the Commonwealth incurs from non-compliant contractors?; 7.) Will taxpayers be angry if contractors supplying non-compliant Y2k products or services have to pay for the products or services even if they do not work because they are immune?; and 8.) What message does this send to companies and Commonwealth agencies and employees regarding an incentive to complete their Y2K remediation projects?

POINT THREE: Point three is an expansion of my last question; in that all immunity legislation has a psychological effect on the behavior of those immunized. Mr. Justice Brandeis, a Justice of the United Supreme Court, in the case of Olmstead v. United States, 277 U.S. 438, 485 (1928) said: "Our government is the potent, the omnipresent, teacher. For good or ill, it teaches the whole people by its example." Some immunity legislation advances public policy. For instance, in "Good Samaritan"

legislation, the behavior that legislatures want to encourage is individual behavior for the good of society that may result in a lawsuit if not performed perfectly i.e. doctors providing medical assistance to emergency victims or donation of food to homeless shelters by restaurants. The greater societal good is outweighed by the losses that may be incurred by the Samaritan's acts. However, in the proposed legislation, is the legislation promoting action that will serve a societal goal or is it in fact promoting INACTION. If in fact the Commonwealth, its agencies and employees are immune from lawsuits for failure to remediate the Year 2000 problem, doesn't that encourage less than diligent efforts on their part. The same applies for "immune contractors"; however that term may be defined.

POINT FOUR: Section (b) of proposed bill 8531, titled "Contract requirement" is overly broad. The language that is overly broad states: "caused by an incorrect date being produced, calculated or generated by a computer ... regardless of the cause of the error." This language does not limit the error to the current Year 2000 problem; but any date error, whether caused by negligence or intentional wrongdoing.

IN SUMMATION, it is my opinion that the sovereign is immune from Year 2000 related lawsuits based on the current state of the law. If the legislature believes otherwise and further believes immunization is needed to protect the resources of the Commonwealth, Section 8522 should be amended to clarify that the Commonwealth, its agencies and employees are clearly immune and no exception applies to waive the immunity. The legislature, as a matter of public policy and fairness to those devoting substantial resources to correct the problem, should not immunize private sector entities from lawsuits for damages that result from their failure to remediate Y2K problems. The severity of the Year 2000 problem and the interconnectedness of all of us to each other; requires that instead of granting immunity to non-compliant entities we demand their compliance. It is clear from Senator Bennett's remarks that even the vigor and responsibility of a company to become compliant will not save it from ruin, if its trading partners and customers are not compliant. And as George Baily said, we have to have faith and all stick together. To me that means, we must all diligently work toward compliance without the buffer of immunity as a safety net.

Thank you for this opportunity to address this very important issue. I welcome your questions and comments.