

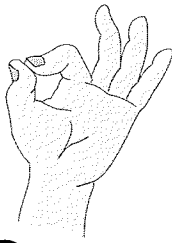
THE RHA REVIEW

ROUTE TO:

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ARE WE Y2OK?



By Donald W. Bendure, CPCU, ARM

Quite possibly, the only subject that has been beaten into the ground more than Clinton's impeachment is the much-anticipated Y2K event and subsequent apocalypse. But encouraging events are taking place, and indications are that the U.S. is making significant strides. We all have been bombarded with what can happen, so for now let's look at some recent events.

We have already passed several sensitive dates without widespread system failures. The most recent date was Feb. 4, 1999, when the airlines and travel agents had to deal with reservations beyond Dec. 31, 1999. This date passed without incident, and all appears well with travel reservations, if only the airline pilots would not call in sick. It appears they had a "bug" of a different sort. Without doubt, other dates will pass, with plenty of praise owing to those that have spent the last several years remediating problematic computer code.

Year 2000 Information and Readiness and Disclosure Act (IRDA): This act became effective on Oct. 19, 1998, and offers nonsecurities-related liability relief to companies attempting to disclose their state of readiness. IRDA provided a window of opportunity for many companies to

avoid liability by disclosing their state of readiness. Surprisingly, there are reports that not many companies took advantage of that window. For those that did, information can be shared relating to their remediation process without risk of prosecution for antitrust issues. This increases efficiency and speeds the process of remediation. There are those who feel, however, that this act does not provide much protection for a company's directors and officers.

State and federal legislation to limit liability: There have been attempts by state and federal legislatures to soften the blow when businesses encounter date-related failures. The

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movement to limit the liability of companies experiencing Y2K failure is gaining momentum. Now that Congress can get back to work on matters of national importance, we expect this issue to again be a high priority. The Year 2000 Consumer Protection Plan Act of 1999, introduced by Rep. Don Manzullo (R-Ill.) and sponsored by two other House Republicans, seeks to limit damages and protect directors and officers from liability for certain Y2K failures. More legislation is being

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offered by Senator John McCain (R-Az.) and others in an effort to stave off a flood of litigation.

Alternative Dispute Resolution (ADR): Several multinational corporations have pledged to seek mediation first before resorting to litigation. The CPR Institute for Dispute Resolution, based in New York, which negotiated these agreements, is a proponent of reduced litigation cost through advance agreement to mediation. Although it is not likely that all disputes will go to mediation, many will be efficiently handled in this arena. Much of the proposed legislation in Congress requires ADR before litigation can be filed.

(Y2OK, continued inside)

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- 20th Anniversary

(Y2OK, continued from cover)

Where will this lead? It remains to be seen how many waves of litigation will be spawned by Y2K issues. Interestingly enough, none of the proposed legislation speaks to the issue of insurance coverage yet. The first wave of litigation no doubt will come from the tort and contractual theories which are the subject of most legislation as things stand. Insurance coverage will be litigated soon thereafter, since many will want to close the financial gap generated by the cost of litigation.

Who will get immunity from prosecution? There is significant movement afoot in several states to limit lawsuits or grant immunity to state agencies, even if an agency is at fault. The chances are that governmental agencies will get the benefit of protection in some significant form unless there is a reversal of sentiment. Companies are forming lobby groups to limit Y2K litigation as much as possible. The National Association of Manufacturers, the U.S. Chamber of Commerce and the Information Technology Association of America, the leading Y2K accreditation organization, have banded together with

more than 80 companies to promote liability limitation from Y2K bugs. We can expect that over the next three to four months, the die will be cast with regard to immunity or limitation of liability.

Where should we be directing our clients' concerns? Commerce over the last several years has become increasingly global. We have all read and understood where the U.S. is in

"The problem that should keep us awake nights lies overseas, both in Europe and in the rest of the world."

regard to its state of readiness or lack thereof. Where are the really serious concerns? In a phrase — "over there." On a scale of one to 10, I would rate the U.S. as a solid six with regard to its readiness, moving to a seven if reports keep improving. Generally, the larger companies are doing much better than the smaller companies with regard to compliance, both external and internal. The problem that should keep us awake

nights lies overseas, both in Europe and in the rest of the world. Certain countries in Europe have done quite well with their remediation plans, but others have not. It appears that Europe deserves a rating of three or better.

The rest of the world is quite another matter. Most of the world has barely begun to think about remediation and the implications of a Y2K event. Those that have are generally realizing the futility of meeting a deadline that is now only 10 months away. Asia has a whole host of pressing concerns that steal the spotlight. The World Bank has assisted by offering Y2K remediation loans in order to spur activity. There are justified concerns that there will be major disruptions of international commerce if the problem is not addressed more aggressively.

So are we Y2OK? We in the U.S. are getting there, but we still have a long way to go with the small to medium-sized firms. The good news is that these firms have the least number of lines of computer code to fix. The bad news is that they also have the smallest budgets to pay for the fix. But the highest-risk businesses are those that do significant importing and/or exporting, whether that business is a Fortune 500 or the new IPO. If that business touches other shores, then it has critical exposure to its supply chain and to its customer base. My opinion? Better get on the phone to these clients, and be sure they understand that it's even more expensive to litigate overseas. **RHA**

Donald W. Bendure is an associate consultant with Robert Hughes Associates, Inc., who has extensive experience as an underwriting manager for umbrella and excess liability lines. He is also experienced in contract wording, product development, coverage enhancements and treaty issues.

FROM NEAR & FAR



High winds and flooding rains brought parts of the United Kingdom to their knees over the Christmas weekend. The storm, which targeted Scotland, Northern Ireland and parts of Northern England, is expected to be responsible for losses of more than \$160 million.



According to the Property Claims Services unit of the Insurance Services Office, Inc., 1998 will be recorded as the third-worst year for catastrophic losses in the last 10 years. It is estimated that more than \$10 billion was paid out for insured losses. Hurricane Georges alone was responsible for almost \$3 billion in insured losses.



Heavy snow in parts of Canada during January resulted in more than 15,000 claims. January's snowfall total was the highest recorded in one month for more than 100 years.

Year 2000 — My Search for Answers

By Olie Jolstad

During some downtime over the holiday season, I embarked upon a mission to determine whether the personal computers in my household might have problems with the dreaded millennium bug.

As I began, my nine-year-old daughter asked me one of those questions that cannot be explained. You can always tell when this is about to happen because her chin drops, her eyebrows furrow, and she looks to her mother with that expression of complete and total bewilderment. Oh, the question . . . “Dad, why is everything that goes wrong with a computer called a bug or virus?” She might as well have asked for the explanation of the theory of relativity.

She decided to go shoot the basketball in temperatures below freezing rather than wait for my explanation. I went back to my mission and soon began to wish that I had joined her outside.

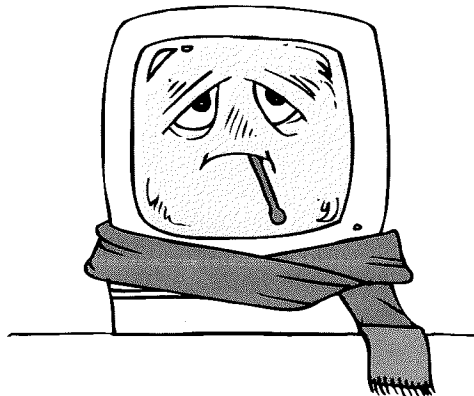
For an example of the ambiguity that I found, you need go no further than Microsoft. If you look for information about Windows 98 on Microsoft's Web site, the following excerpt can be found:

“While these issues can result in the incorrect display of Year 2000 dates under certain conditions, they pose no risk of data loss or other serious loss of functionality. In fact, most of our customers will never run into these issues in their normal daily use of their computer.” Since when is anything “normal” when it comes to sophisticated software and hardware configuration?

I downloaded no less than a dozen various testing diagnostics — some good, some horrible, nothing outstanding. What I found is that my less-than-one-year-old computer, according to these various diagnostics, contained 67 Year 2000 bugs. Fifty-one of these were related to Microsoft software, another dozen were related to Netscape soft-

ware, and the remaining four concerned the BIOS and CMOS. The BIOS and CMOS are critical to the operating systems, so this concerned me.

I can tell you that, having experienced the search for bug and virus fixes this weekend, I am convinced that a lot of people and organizations are outside shooting hoops. Also, if nothing else is learned from my experience, know these two things. Be sure that whatever diagnostics or software you use tests the BIOS and not just your hardware clock. Moreover, be very, very careful if



anything asks about or automatically changes your WIN.COM file. It took me a long, long time to get that “fixed” after it was made Y2K “compliant.” That said, here are some Internet sites that you might find helpful.

√ www.nstl.com - YMARK2000 testing software is a program that will fix the computer's BIOS and/or basic input and output system. The BIOS is the intercommunication with all the parts of your system, and it reads the software that you use.

√ www.vendor2000.com - Vendor 2000 lists compliant and non-compliant equipment.

√ www.microsoft.com/technet/topics/year2k - Microsoft's product line is here, and it provides information

about what is and is not compliant.

The following is a list of software testing equipment and the corresponding Web sites. These are listed alphabetically — the order does not suggest that one product is better than another.

√ 2000 Toolbox - 222.nai.com

√ Check 2000 PC Deluxe - www.gmt-uta.com

√ Fix2000 - www.intelliquis.com

√ Norton 2000 - www.symantec.com

√ Vertex 2000 - www.bigisoft.com


After spending numerous hours traveling the bandwidth of the Internet, I have come to the following general conclusions about the millennium bug:

√ There will be a lot of problems with software.

√ There will be a lot of problems with personal computers.

√ There will be a lot of problems with mainframes.

√ There are tens of millions of experts with their own advice and “fixes” for the bugs.

√ There is a lot of useless information out there, especially from the software and hardware manufacturers who have little, if any, idea how to “fix” their own products. 

Olie Jolstad has been with Robert Hughes Associates, Inc., since 1995. He serves as the company's vice president responsible for risk management and actuarial consulting.

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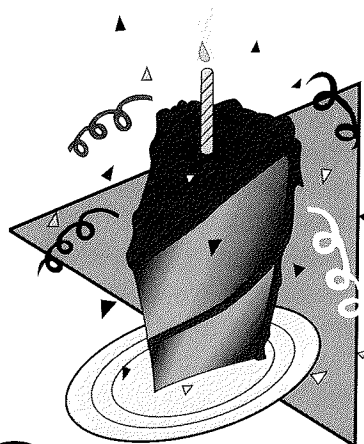
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20 Years Old

1999 not only signals the end of the 1900s — it also heralds the 20th anniversary of Robert Hughes Associates, Inc.

In 1979 Bob Hughes formed RHA in order to provide insureds and self-insureds with responsive, innovative and objective counsel with regard to their insurance and risk-based needs. We still hold that objective dear. We offer a broad range of services, including fully credentialed actuarial consulting, expert witness services, insurance archaeology, insurance program design and implementation, insurance company management, and risk management and insurance consulting services.

There has been a lot of change in the last two decades, and there will undoubtedly be as much if not more in the next couple of decades. We would like to take this opportunity to express our gratitude for your past and future support and friendship. Thanks for a great 20 years — here's to the next 20!



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THE RHA REVIEW

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