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New York County Supreme Court Expands the Continuous Relationship Doctrine to Toll the Statute of Limitations

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However, nothing in the Appellate Division's decision revoking the license compels that conclusion.[26] It is submitted that the *Williams* court's mechanical application of the *Felder* per se rule to facts different from those to which the rule was meant to apply led it to unnecessarily and unwisely extend the scope of the rule.

Vacating a conviction years after it is rendered has far-reaching consequences. Prosecutors are faced with the choice of dismissing the charges against a defendant, or retrying him, a difficult task if witnesses are unavailable or have suffered memory lapses.[27] Because application of the *Felder* rule was intended to be limited to narrowly-defined factual settings, in cases outside its narrow scope the more prudent approach would be to abandon the per se rule, and instead analyze the effectiveness of counsel's representation on a case by case basis.

Claudia A. Farella

New York County Supreme Court expands the continuous relationship doctrine to toll the statute of limitations

The statute of limitations[1] protects persons who are called to

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[26] *See In re* Steinberg, 137 App. Div. 2d 110, 528 N.Y.S.2d 375 (1st Dep't), *appeal denied*, 72 N.Y.2d 807, 529 N.E.2d 424, 533 N.Y.S.2d 56 (1988). The Appellate Division did not at any point in its decision state that its findings or its order to revoke Steinberg's license rendered Steinberg "unlicensed" throughout the seventeen years he had been admitted to practice law. *Id.* Moreover, there is no indication or support in the Appellate Division's decision for the *Williams* court's conclusion that the revocation applied retroactively. *Id.*; *see also Mishkoff*, 135 App. Div. 2d at 58, 524 N.Y.S.2d at 219 (court revoked attorney's license but did not state that revocation rendered him unlicensed retroactively).

[27] *See* Solina v. United States, 709 F.2d 160, 169 (2d Cir. 1983). The *Solina* court acknowledged the severity of the consequences of a per se rule, stating that "[i]t may well be impracticable for the Government to retry Solina 13 years after the event." *Id.*

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[1] *See* CPLR art. 2 (McKinney 1972 & Supp. 1989). CPLR 201 provides: "An action . . . must be commenced within the time specified in this article unless a different time is prescribed by law or a shorter time is prescribed by written agreement. No court shall extend the time limited by law for the commencement of an action." CPLR 201 (McKinney 1972). Courts, however, may extend the time limitation for performing certain procedural requirements, *see id.* 2004, and a defendant's actions may be deemed by the court to estop him or her from pleading the defense. *See, e.g.*, Simcuski v. Saeli, 44 N.Y.2d 442, 448-50, 377 N.E.2d 713, 716-17, 406 N.Y.S.2d 259, 262-63 (1978) (plaintiff relieved of time bar where physician's intentional concealment of malpractice delayed commencement of action). The

defend stale claims after the expiration of a specified period of time.[2] The general rule in professional malpractice cases is that the cause of action accrues and the statute of limitations begins to run on the date of the act of malpractice, not on the date of the injury's discovery.[3] In certain circumstances, however, running of the

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estoppel exception is derived from the statutory law which allows the court to find that because of the defendant's conduct, it would be "inequitable to permit him to interpose the defense of the statute of limitation." GOL § 17-103(4)(b) (McKinney 1978).

At common law, no statute of limitations existed; the right to a cause of action survived the joint lifetimes of the parties. *See* SIEGEL § 33, at 34 (1978). The origin of modern time limitations traces back to the English Limitation Act of 1623, *see* 1 WK&M ¶ 201.01, at 2-7 (1988), apparently enacted to keep inconsequential claims out of the King's court. *See Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1178 (1950). Today in New York, the legislature, rather than the judiciary, is regarded as having the power to alter the operation of the statute of limitations. *See* Cubito v. Kreisberg, 69 App. Div. 2d 738, 745-46, 419 N.Y.S.2d 578, 583 (2d Dep't 1979), *aff'd*, 51 N.Y.2d 900, 415 N.E.2d 979, 434 N.Y.S.2d 991 (1980).

For a general discussion of the changes in the statute of limitations that occurred when the CPLR replaced the CPA, see Hesson, *The New York Civil Practice Law and Rules*, 27 ALB. L. REV. 175, 177-78 (1963).

[2] *See* Flanagan v. Mount Eden Gen. Hosp., 24 N.Y.2d 427, 429, 248 N.E.2d 871, 872, 301 N.Y.S.2d 23, 25 (1969). "The Statute of Limitations was enacted to afford protection to defendants against defending stale claims after a reasonable period of time had elapsed during which a person of ordinary diligence would bring an action." *Id.*

Various policy considerations have been set forth as advantages of limitations periods. First, they are statutes of repose, beneficial to society as a whole. *See* Schwartz v. Heyden Newport Chem. Corp., 12 N.Y.2d 212, 218, 188 N.E.2d 142, 145, 237 N.Y.S.2d 714, 718, *cert. denied*, 374 U.S. 808 (1963). A second factor is the effect the passage of time has on the ability of the parties to receive a fair trial due to the loss of or diminished reliability of evidence. *See* 1 WK&M ¶ 201.01, at 2-8. *But see* United States v. Curtiss Aeroplane Co., 147 F.2d 639, 642 (2d Cir. 1945) ("statutes of limitation are [not] in any degree for the purpose of relieving courts of the trial of issues which have become hard to decide by the loss of evidence"). Finally, the Supreme Court has stated that such statutes force parties with valid claims to bring them quickly, with the passage of years creating a presumption against the claim's validity. *See* Riddlesbarger v. Hartford Ins. Co., 74 U.S. (7 Wall.) 386, 390 (1868).

The parties themselves can virtually always agree in writing to shorten the applicable limitations period, *see* CPLR 201, commentary at 57 (McKinney 1972), but to extend the period the parties must enter an agreement after the action has accrued. *Id.* 201(3), commentary at 58.

[3] *See* 1 WK&M ¶ 214.20, at 2-244. Courts have applied the general accrual rule to malpractice by various professionals. *See* Glamm v. Allen, 57 N.Y.2d 87, 439 N.E.2d 390, 453 N.Y.S.2d 674 (1982) (accountants); *Schwartz*, 12 N.Y.2d at 212, 188 N.E.2d at 142, 237 N.Y.S.2d at 714 (physicians); Starbo v. Ruddy, 66 App. Div. 2d 950, 411 N.Y.S.2d 707 (3d Dep't 1978) (attorneys); Sears, Roebuck & Co. v. Enco Assocs., 54 App. Div. 2d 13, 385 N.Y.S.2d 613 (2d Dep't 1976) (architects), *modified*, 43 N.Y.2d 613, 372 N.E.2d 555, 401 N.Y.S.2d 767 (1977).

Strict application of the rule has occasionally led to inequitable results where a plaintiff's claim has been deemed time-barred by the court. In *Schwartz v. Heyden Newport Chemical Corp.*, the plaintiff had a substance that was manufactured by the defendant inserted into his sinuses for visibility in X-rays. 12 N.Y.2d at 215, 188 N.E.2d at 143, 237

malpractice limitations period is tolled under the continuous treatment/continuous relationship doctrine.[4] Developed originally in the physician-patient context,[5] the doctrine has been judicially extended to other professional relationships.[6] Recently, in *McCabe v.*

N.Y.S.2d at 715. Thirteen years later, the plaintiff had an eye removed, allegedly because some of the substance had remained in his head and caused cancer. *Id.* The action was commenced two years later, but the court held that the statute of limitations had expired because the cause of action accrued when the substance entered the plaintiff's body. *Id.* at 217, 188 N.E.2d at 145, 237 N.Y.S.2d at 717. The court concluded that because the provision in the CPLR for the discovery rule expressly listed only cases of fraud, the legislature did not intend to expand the exception any further. *Id.* at 218, 188 N.E.2d at 145, 237 N.Y.S.2d at 718; *see also* Goldsmith v. Howmedica, Inc., 67 N.Y.2d 120, 124, 491 N.E.2d 1097, 1099, 500 N.Y.S.2d 640, 642 (1986) (legislature, not court, must change general accrual rule); Steinhardt v. Johns-Manville Corp., 54 N.Y.2d 1008, 1010, 430 N.E.2d 1297, 1299, 446 N.Y.S.2d 244, 246 (1981) ("further extension . . . [is] a matter best reserved for the Legislature"), *cert. denied*, 456 U.S. 967 (1982).

In 1986, the New York State legislature enacted a "discovery of injury" rule for determining accrual in cases involving "the latent effects of exposure to any substance." CPLR 214-c(2) (McKinney Supp. 1989). Nevertheless, the traditional rule remains applicable in most cases.

[4] *See* Borgia v. City of New York, 12 N.Y.2d 151, 155, 187 N.E.2d 777, 778-79, 237 N.Y.S.2d 319, 321 (1962). In *Borgia*, the Court of Appeals recognized the continuous treatment doctrine for the first time, stating that the doctrine delayed accrual of the malpractice claim. *Id.* The court subsequently revised the concept, holding that the doctrine merely tolled the running of the statute of limitations rather than actually delaying the claim's accrual; the claim still accrues upon performance of the alleged malpractice. *See, e.g.*, McDermott v. Torre, 56 N.Y.2d 399, 407, 437 N.E.2d 1108, 1111-12, 452 N.Y.S.2d 351, 354-55 (1982). This distinction serves two purposes: it allows the plaintiff to bring an action before the continuous relationship has ended, *see id.*, and it allows other statutory tolls to operate during that relationship. *See Glamm*, 57 N.Y.2d at 94-95, 439 N.E.2d at 394, 453 N.Y.S.2d at 678-79.

[5] *See Borgia*, 12 N.Y.2d at 155, 187 N.E.2d at 779, 237 N.Y.S.2d at 321. The court in *Borgia* held that in cases of medical malpractice, when treatment related to the underlying injury is continued, the statute of limitations does not accrue until the treatment ends. *See id.* The majority found support for its holding in Hammer v. Rosen, 7 N.Y.2d 376, 165 N.E.2d 756, 198 N.Y.S.2d 65 (1960), which itself had referred to five cases accepting the doctrine. *See Borgia*, 12 N.Y.2d at 156, 187 N.E.2d at 778, 237 N.Y.S.2d at 321. Additional support was provided by a commentator who noted historical recognition of the theory. *Id.* (citing Lillich, *The Malpractice Statute of Limitations in New York and Other Jurisdictions*, 47 CORNELL L.Q. 339 (1962)).

CPLR 214-a, applicable to medical, dental, and podiatric malpractice, provides that "[a]n action . . . must be commenced within two years and six months of the act . . . or last treatment where there is continuous treatment for the same illness . . . ." CPLR 214-a (McKinney Supp. 1989). The section was codified after being recognized in case law. *See supra.*

[6] *See, e.g.*, Citibank, N.A. v. Suthers, 68 App. Div. 2d 790, 418 N.Y.S.2d 679 (4th Dep't 1979) (attorney-client); Siegel v. Kranis, 29 App. Div. 2d 477, 288 N.Y.S.2d 831 (2d Dep't 1968) (same); County of Broome v. Vincent J. Smith, Inc., 78 Misc. 2d 889, 358 N.Y.S.2d 998 (Sup. Ct. Broome County 1974) (architect-client); Wilkin v. Dana R. Pickup & Co., 74 Misc. 2d 1025, 347 N.Y.S.2d 122 (Sup. Ct. Allegany County 1973) (accountant-client). It should be noted that in addition to being fiduciary relationships, these relationships are also

RMJ Securities,[7] the Supreme Court, New York County, extended the doctrine of continuous relationship by applying it to a situation involving the relationship between the executors and the beneficiaries of an estate.[8]

In *McCabe*, the beneficiaries of an estate brought an action against the executors,[9] alleging a breach of fiduciary duty.[10] The decedent, John McSharry, the founder of RMJ Securities ("RMJ"), had entered into an agreement with the company's other shareholders providing for the mandatory redemption of the corporation's stock at book value plus an agreed goodwill factor upon the death of any shareholder.[11] The defendants, one of whom was an RMJ shareholder, were appointed executors of McSharry's estate.[12] Pursuant to the shareholder agreement, RMJ purchased the stock from the estate for $220,000.[13] Nine months later, Security Pacific Corporation purchased RMJ for sixteen million dollars.[14]

In their suit, the plaintiffs claimed that the defendants had halted ongoing buy-out negotiations immediately following McSharry's death in order to ensure low valuation of his stock.[15] The plaintiffs also alleged that the defendants intentionally kept the decedent and his estate uninformed regarding the negotiations and their possible effect on the value of McSharry's shares.[16] However,

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professional relationships. It is suggested that the doctrine be limited to a continuous relationship between a professional and client, where the fiduciary has special training. *See infra* notes 28-30 and accompanying text.

[7] N.Y.L.J., Oct. 19, 1988, at 21, col. 6 (Sup. Ct. New York County).

[8] *See id.*

[9] *Id.* This action was brought by six residuary beneficiaries of the estate; a seventh instituted an action in federal court in New York. *Id.* at 22, col. 1.

[10] *Id.* at 21, col. 6. Originally, RMJ, four RMJ shareholders, and the two executors of McSharry's estate were named as defendants. *Id.* However, the claims against all but the executors were dismissed. *See infra* note 19. The plaintiffs also alleged fraud and breach of fiduciary duty against the RMJ shareholders, as well as two causes of action sounding in contract. *McCabe*, N.Y.L.J., Oct. 19, 1988, at 22, col. 1. This Survey only refers to the executor defendants.

[11] *McCabe*, N.Y.L.J., Oct. 19, 1988, at 22, col. 1.

[12] *Id.* Defendant Cates was included among the five shareholder parties of RMJ who entered into the redemption agreement. *Id.*

[13] *Id.* Justice Cohen recognized that the stock purchase in August 1981 was the latest date the fiduciary breach could have occurred. *Id.*

[14] *Id.* Security Pacific Corporation ("Security Pacific") purchased RMJ in May 1982. *Id.*

[15] *Id.* Negotiations were ongoing between RMJ and Security Pacific up to the time of McSharry's death. *Id.* The plaintiffs also alleged that RMJ and Security Pacific came to an agreement before McSharry died. *Id.*

[16] *Id.*

it was not until seven years after RMJ purchased the stock from the estate that plaintiffs interposed their claim for compensatory and punitive damages for this alleged breach of fiduciary duty.[17] The defendants, in response, contended that the action's six-year limitations period had expired.[18]

The court in *McCabe* denied the defendants' motion to dismiss the complaint on the ground that it was time-barred.[19] Writing for the court, Justice Cohen held that under the continuous relationship doctrine, the running of the limitation period was tolled at least until RMJ was bought out because the executors had continuously represented the estate during that time.[20] Justice Cohen emphasized the special fiduciary duty an executor owes the estate he serves.[21] In expanding the types of situations to which the continuous relationship doctrine applies, the court relied upon the relative inequality between the parties,[22] stressing the fiduciaries' superior knowledge of the substantive matter underlying the relationship,[23] as well as the beneficiaries' reliance on the good faith of the fiduciaries and their ignorance of the need to question the fiduciaries' actions.[24]

While it was appropriate for the court to examine the continuous relationship doctrine in light of the facts presented, it is submitted that the *McCabe* court erroneously broadened the scope of the doctrine by allowing for the tolling of the limitations period during the executors' involvement in negotiations. Although recently the doctrine has been increasing in scope, its past applications had been limited to disputes involving professional relation-

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[17] *Id.* The claim was interposed in April 1988, after the limitations period had expired if computed according to the general rule. *See id.* Plaintiffs sought their proportional shares of the difference between the amount paid to the estate for the stock and the amount paid to the RMJ shareholders in the buy-out. *Id.*

[18] *Id.* at 21, col. 6.

[19] *Id.* at 22, col. 1. The court denied the motion to dismiss as time-barred only as to the estate executors. *Id.*

[20] *Id.* The court noted that the plaintiffs could not have discovered the breach until May 1982, the date Security Pacific purchased RMJ. *Id.* at 22, col. 2.

[21] *Id.* at 22, cols. 1-2.

[22] *Id.* at 22, col. 2. The court listed the cases expanding the continuous relationship doctrine to professional relationships between clients and architects, accountants, and attorneys, concluding that the doctrine should also apply to an executor-beneficiary relationship. *Id.*

[23] *Id.* (citing County of Broome v. Vincent J. Smith, Inc., 78 Misc. 2d 889, 358 N.Y.S.2d 998 (Sup. Ct. Broome County 1974)).

[24] *Id.* The beneficiary must rely on the fiduciary's good faith "if only to avoid compromising a sensitive relationship." *Id.*

ships.[25] While the court's action may seem a logical next step, it is suggested that expansion of the doctrine to cover a non-professional relationship represents an unwarranted deviation from prior judicial rulings.[26] The requisite qualifications of executors are minimal and they, unlike professionals, are not charged with any special skill to carry out their duty.[27] Therefore, it is submitted that in employing the continuous treatment doctrine in actions against estate executors, the court unfairly held non-professionals to a professional standard of care.

In direct conflict with the *McCabe* decision, other lower courts have refused to apply the continuous relationship doctrine to non-professionals.[28] Furthermore, the Court of Appeals has expressly indicated that a professional relationship is necessary to invoke the

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[25] *See* cases cited *supra* note 6.

[26] *See, e.g.*, Greene v. Greene, 56 N.Y.2d 86, 94, 436 N.E.2d 496, 501, 451 N.Y.S.2d 46, 51 (1982). Until *McCabe*, the doctrine had been applied only to those cases involving a professional acting in a fiduciary capacity. *See Greene*, 56 N.Y.2d at 94, 436 N.E.2d at 501, 451 N.Y.S.2d at 51. Because medical malpractice is the only professional malpractice controlled by statute with regard to the continuous relationship doctrine, "with respect to other types of professional dereliction, judicial authority has been left intact." *Id.* The case law, in clear language, limits the application of the doctrine to professional relationships. *See* Board of Educ. v. Thompson Constr. Corp., 111 App. Div. 2d 497, 498-99, 488 N.Y.S.2d 880, 882 (3d Dep't 1985) ("[s]tatute of [l]imitations was tolled for as long as the confidential *professional* relationship . . . existed") (emphasis added). In *Greene*, the court emphatically stated that "the rule recognizes that a person seeking *professional* assistance has a right to repose confidence in the *professional's* ability," adding that "[o]n this basis the continuous treatment rule has been held applicable to other types of *professionals*." *See* 56 N.Y.2d at 94, 436 N.E.2d at 500, 451 N.Y.S.2d at 50 (emphasis added).

[27] *See* N.Y. SURR. CT. PROC. ACT § 707 (McKinney 1963). Section 707 merely lists those limited persons not qualified to serve as an executor, including an infant, an incompetent, and a felon. *Id.* The statute also provides that the court may, in its discretion, declare someone ineligible for their inability to read or write English. *Id. See generally In re* Estate of Wenig, 31 Misc. 2d 903, 905, 222 N.Y.S.2d 205, 207 (Sur. Ct. N.Y. County 1961) (statutory grounds for disqualification are exclusive); *In re* Canter, 146 Misc. 123, 127, 261 N.Y.S. 872, 877 (Sur. Ct. Kings County 1933) (limitations disqualifying executors must be strictly construed in favor of eligibility).

[28] *See Thompson Constr.*, 111 App. Div. 2d at 499, 488 N.Y.S.2d at 882. The *Thompson Construction* court found no professional relationship between a general contractor and a school district on which to toll the limitations period. *Id.*; *see also* Flora's Card Shop v. Paul Krantz & Co., 111 Misc. 2d 907, 908, 445 N.Y.S.2d 392, 393 (Sup. Ct. N.Y. County 1981) (although "doctrine has been extended to lawyers and other professionals," court refused to apply it to insurance broker), *aff'd*, 91 App. Div. 2d 938, 458 N.Y.S.2d 880 (1st Dep't 1983). In dicta, however, the *Flora's Card Shop* court indicated that had the defendant "made any misrepresentation which induced the plaintiff to delay the commencement of the action," the plaintiff might have been able to raise the doctrine of equitable estoppel to prevent the defendant from using the statute of limitations as a defense. *Id.*; *see infra* note 33 and accompanying text.

continuous relationship doctrine.[29] It is suggested that the *McCabe* court's reliance upon the fiduciary relationship as a basis for extending the doctrine[30] was, therefore, dubious. In fact, the Court of Appeals arguably rejected such reasoning when it failed to apply the continuous relationship doctrine to another non-professional fiduciary relationship, that between an escrow agent and his client.[31] It is submitted that it was inappropriate for the *McCabe* court "to make such a quantum jump in the law to fit an appealing case."[32] Of course, had the court found that the defendant had made any affirmative misrepresentation inducing the plaintiff to delay commencement of the action, the court could have invoked the doctrine of equitable estoppel to prevent the defendant from raising the statute of limitations as a defense.[33] Absent such a finding, however, no amount of unfairness to a particular plaintiff may override application of the statute of limitations.

While refusal to expand the continuous relationship doctrine may appear harsh in some instances, an expansion endangers the very purpose underlying the statute of limitations. It is suggested

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[29] *See* Cabrini Medical Center v. Desina, 64 N.Y.2d 1059, 1062, 479 N.E.2d 217, 219, 489 N.Y.S.2d 872, 874 (1985); *supra* note 26 and accompanying text.

[30] *See supra* notes 23-24 and accompanying text.

[31] *See* Lazzaro v. Kelly, 57 N.Y.2d 630, 632, 439 N.E.2d 868, 868, 454 N.Y.S.2d 59, 59 (1982). The court ruled that "[s]ervice as an escrow agent does not provide a basis for invocation of the continuous representation doctrine." *Id.*

[32] *Flora's Card Shop*, 111 Misc. 2d at 908, 445 N.Y.S.2d at 393. The *Flora's Card Shop* court refused to expand the continuous relationship doctrine to an insurance broker where the defendant broker agreed to obtain insurance for the plaintiff, but failed to do so. *Id.* at 907-08, 445 N.Y.S.2d at 393-94.

[33] *See, e.g.*, Erbe v. Lincoln Rochester Trust Co., 13 App. Div. 2d 211, 213, 214 N.Y.S.2d 849, 852 (4th Dep't 1961). In *Erbe*, plaintiffs were the beneficiaries of an estate and brought an action against its trustee when the trustee purchased stock from the estate. *Id.* at 212-13, 214 N.Y.S.2d at 851. The court held that in an action for breach of a fiduciary relationship, a trustee could not take advantage of the limitations statute where his actions led the plaintiffs to believe no breach had occurred. *Id.* at 213, 214 N.Y.S.2d at 852. The defendant was estopped from pleading the statute of limitations under the court's power in equity because of the false representations made to the plaintiffs. *Id.* at 215, 214 N.Y.S.2d at 853; *cf.* Board of Educ. v. Thompson Constr. Corp., 111 App. Div. 2d 497, 499, 488 N.Y.S.2d 880, 882 (3d Dep't 1985) ("There is nothing in the record establishing that [the defendant] made any representation which induced plaintiff to delay the commencement of the action.").

In *McCabe*, there were no allegations that the defendant acted to induce the plaintiffs not to file suit and, therefore, the doctrine of equitable estoppel was not applicable. The doctrine of equitable estoppel is discussed in detail in Simcuski v. Saeli, 44 N.Y.2d 442, 377 N.E.2d 713, 406 N.Y.S.2d 259 (1978). *See generally* 1 WK&M ¶ 201.13, at 2-29 (discussing equitable estoppel).

that the exception was unwisely extended to the executor-beneficiary relationship, and that application of the doctrine of equitable estoppel in such instances would produce results more consistent with the recognized intent behind limitations periods.

Kevin Murphy

CIVIL PRACTICE LAW AND RULES

CPLR 214(2): Three-year statute of limitations provision for statutorily-created causes of action is applicable to a claim by an estate under the Dram Shop Act rather than the two-year period for wrongful death actions in EPTL § 5-4.1

At common law, the victim of an alcohol-related accident had no recourse against a commercial vendor of intoxicating liquors.[1] In response to the troublesome problem of drunk driving,[2] many states, including New York,[3] have extended liability to vendors

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[1] *See* D'Amico v. Christie, 71 N.Y.2d 76, 83, 518 N.E.2d 896, 898, 524 N.Y.S.2d 1, 3 (1987); *see also* Fox v. Mercer, 109 App. Div. 2d 59, 60, 489 N.Y.S.2d 792, 794 (4th Dep't 1985) ("The Dram Shop Act created a cause of action unknown at common law by allowing recovery against a tavern owner for injuries caused as a result of patron's intoxication . . . ."); Gabrielle v. Craft, 75 App. Div. 2d 939, 940, 428 N.Y.S.2d 84, 86 (3d Dep't 1980) ("Under the common law, no tort cause of action lay against one who furnished, whether by sale or by gift, intoxicating liquor to a person who thereby became intoxicated . . . ."). Common law courts refused to recognize liability of a commercial vendor because "[e]xcessive alcohol consumption was deemed to be the proximate cause of injuries produced by the inebriate; selling or furnishing alcohol to an adult who elected to become intoxicated was not viewed as the root of the resulting harm." *D'Amico*, 71 N.Y.2d at 83, 518 N.E.2d at 898, 524 N.Y.S.2d at 3.

[2] *See* Note, *A Response to Deficiencies in Illinois Dramshop Liability*, 1986 U. ILL. L. REV. 837, 837. The problem was especially ripe for a statutory solution, given the prevalence of alcohol-related fatalities. *See* NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., FATAL ACCIDENT REPORTING SYSTEM 1986, at 2-2. In 1986, it was estimated that 23,990 traffic accident fatalities were alcohol-related. *Id.* Although this was a five percent decrease from 1982, it was in fact a seven percent increase over the proportion of alcohol-related deaths occurring in 1985. *Id.*

In response to the serious problem of drunk driving, President Reagan, in 1983, instituted the Presidential Commission on Drunk Driving. *See* Comment, *Server vs. Driver Liability: A Suggested Change to Reduce Drinking and Driving*, 7 N. ILL. U.L. REV. 257, 257 (1987). "The Commission found that at least 50 percent of all highway deaths involve the use of alcohol" and that "the annual economic loss is estimated at 21 billion dollars." *Id.*

[3] *See* GOL § 11-101 (McKinney 1978 & Supp. 1989). The statute provides that:

1. Any person who shall be injured in person, property, means of support, or