

Based on our evaluation investigation of this matter, it is apparent that your insured was primarily at fault in causing the subject motor vehicle accident as being in violation of California Vehicle Code section 23152 (a). This section states important part:

(a) It is unlawful for any person who is under the influence of any alcoholic beverage or drug, or under the combined influence of any alcoholic beverage and drug, to drive a vehicle.

Driving a vehicle while under the influence of an intoxicating liquor, a drug, or both raises a presumption of negligence. *People v Phillips* (1985) 168 Cal.App.3d 642, 646. The driver's intoxication may be found to have contributed to causing a collision even without evidence of a violation of any other traffic regulation. In determining whether the driver violated vehicle code section 23152 (a), the trier of fact may consider evidence of the number of drinks taken, the driver's appearance and conduct, odor of alcohol, measured blood alcohol content, and expert opinion on the effect of blood alcohol level on peripheral vision and reflex time. *Hyatt v Sierra Boat Co.* (1978) 79 Cal.App.3d 325, 334.

A person who voluntarily drinks to the point of intoxication before driving may be subject to punitive damages. A driver's reckless misconduct may constitute the "malice" that supports a punitive damages award. *Taylor v Superior Court* (1979) 24 Cal.3d 890, 897.

Pursuant to evidence code section 669, violation of the foregoing vehicle code section constitute negligence per se (see also BAJI § 3.45). Therefore, a prima facie case of negligence has been established in this matter.

I would also like to take this opportunity to deal with the apparent period of negligence assignable to \_\_\_\_\_. Since Ms. \_\_\_\_\_ was faced with a visible stop sign when she proceeded into the subject intersection she potentially violated California Vehicle Code section 21802 (a). Therefore, she may be considered imperatively negligent in causing this subject motor vehicle accident. However, her comparative negligence would not relieve your insured from prima facie liability under Vehicle Code section 23152 (a). Additionally, should this matter proceed we will pursue a claim for punitive damages against your insured as allowed by California law.