

Although both a driver and an adult pedestrian must use ordinary care, the driver must use greater care because of his greater capacity for causing injury. *Cucinella v. Weston Biscuit Co.*(1954) 42 C2d 71,80, 265 P2d 513,519; *Arentz v. Blackshere* (1967) 248 CA2d 638, 640, 56 CR 809, 811; *Rubalcaba v. Sweeney* (1959) 168 CA2d 1, 5, 335 P2d 157, 159.

A driver's violation of a pedestrian's right of way (Vehicle Code §§ 21950(a), 21951-21952) gives rise to a presumption of negligence, and an undisputed violation for which the driver gives no adequate explanation is negligence as a matter of law. See, e.g. *La Manna v. Stewart* (1975) 13 C3d 413, 427, 118 CR 761 (driver's watching other car approaching intersection not adequate excuse); *Schmitt v. Henderson* (1969) 1 C3d 460, 463, 82 CR 502 (unexplained left turn into a crosswalk); *Gray v. Brinkerhoff* (1953) 41 C2d 180, 184, 258 P2d 834, 836 (driver's attention diverted by another car).

Mr. _____ was not negligent in any way, nor was there any way in which Mr. _____ could have prevented this incident. Therefore, this settlement demand is based on our assumption of no comparative fault.