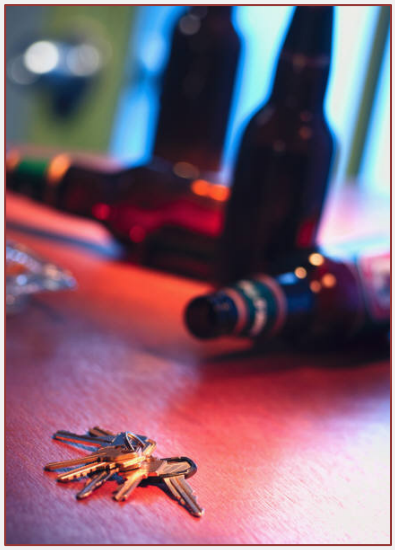
Roadblocks Ahead

Employers Liable for Driving Accidents This Holiday Season

By Lara Shortz



Tis the season, and holiday soirees are in full throttle. It is time to be festive, and show your employees a good time. The advertising industry, in particular, has an affinity for throwing high-end holiday parties replete with holiday-themed libations. While you may be aiming to make this year's party the best in town, two recent decisions by the California Courts of Appeal may give you pause before you break out the full bar.

In one recent case, *Purton v. Marriott International*, a San Diego Marriott held its annual holiday party and served only beer and wine. One of the hotel's bartenders arrived with a flask filled with whiskey and a supervisor used hotel liquor to refill the flask. Intoxicated, the employee drove home with a co-worker and arrived safely. He then left his house 20 minutes later to drive the fellow employee home and, during that trip, struck another vehicle and killed the driver. The deceased's family sued Marriott, who in turn asserted that it was not liable because the employee was acting outside the scope of his employment.

The Court of Appeal rejected the argument and held that since the hotel provided the party for the "benefit of the employees," drinking was within the scope of employment, and the hotel could be liable for the subsequent acts of its employees. This case will be tried on remand and while it's unclear the extent Marriott will be found liable, the decision could have significant implications for how you plan, conduct and supervise your next industry holiday party.

If that didn't dampen your holiday spirit, consider another recent California decision, *Moradi v. Marsh, USA, Inc.* that addressed the "going and coming" rule. Generally, an employer is not liable for the acts of its employees when going to, or coming from, work. In this case, the Court of Appeal found that an employer could be found liable after an employee used her personal vehicle to transport some co-workers to a work-related event and then got into an accident in the parking lot of a frozen yogurt shop!

The Court held that since the employee, an insurance salesperson, frequently used her car for business throughout the course of the day, the "required vehicle exception" made the "going and coming rule" inapplicable. The "required vehicle exception" applies if employees use their personal vehicles as express or implied conditions of employment; account executives, administrative assistants, producers, creatives and possibly even senior executives are all likely to fall under this exception. We will be watching to see how this case is applied, but there could be significant long-term consequences

Unfortunately, these decisions indicate a trend that California courts are moving toward increased liability for employers regarding the driving acts of their employees. So before you serve liquor or allow employees to spike the eggnog or apple cider this season, consider the potentially devastating financial consequences for your business.

Providing transportation is always a best practice, and ensuring employees are sober before they drive from one party to the next will further lessen your company's potential risk of liability.

Lara Shortz is an experienced litigation attorney at the law firm of Michelman & Robinson, LLP, who has represented clients in a wide range of practice areas and industries, including Financial Services, Insurance, Manufacturing & Distribution, Professional Services, Health Care, Advertising, Marketing & Media and Underground Storage Tank Enforcement. Ms. Shortz advises management on state and federal employment acts (such as EEOC, FEHA, ADA, ADEA, WARN, etc.), hiring, firing and wage and hour compliance in the areas of employment law for management. She also handles executive employment contract disputes and handles workplace training, investigations and compliance.