

1 **WO**

2

3

4

5

6

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

7

8

9

COLONY INSURANCE COMPANY,)

No. CV-07-1525-PHX-JAT

10

Plaintiff,)

ORDER

11

vs.)

12

EVENTS PLUS, INC., an Arizona
corporation; RED BULL NORTH
AMERICA, INC., a California
corporation; RED BULL GMBH, an
Austrian corporation; BRIGITTE
TARGOSZ, in her individual capacity and
as representative of the Estate of Robert D.)
Targosz and as statutory beneficiary for
the survivors of Robert D. Targosz,
namely: SUE ANN CASSIDY and
EUGENE TARGOSZ; DOES 1 through
X; ABC PARTNERSHIPS I through X;
AND BLACK CORPORATIONS I
through X,)

20

Defendants.)

21

22

23

Pending before the Court are the Motion for Summary Judgment of the Targosz
Defendants (“Targosz Defendants”) (Doc. # 16), Plaintiff Colony Insurance Company’s
 (“Colony”) Cross-Motion for Summary Judgment Against All Defendants (Doc. # 27), and
Plaintiff Colony’s Motion for Default Judgment (Doc. #25).

27

28

1 **I. FACTUAL BACKGROUND**

2 This case is a declaratory relief action in which Colony seeks a declaration that its
3 commercial general liability policy issued to Events Plus, Inc. (“Events Plus” or “the
4 insured”) identified as policy number GL3368147, with a coverage period of April 25, 2006
5 to April 25, 2007 (“the Policy”), provides no coverage in connection with an accident
6 involving Gilbert Police Officer Robert D. Targosz (“Officer Targosz”) on April 29, 2006.
7 (Complaint, Doc. #1, ¶ 9.)

8 This declaratory relief action arises from an underlying state court lawsuit, *Brigitte*
9 *Targosz, et al. v. Red Bull North America, Inc., et al.*, Cause No. CV2006-018504,
10 (“underlying suit” or “Red Bull Complaint”), in which the plaintiffs allege that, after
11 becoming intoxicated, one Tyler Fahlman (“Mr. Fahlman”), caused a motor vehicle accident
12 in which Officer Targosz was killed. (TDSOF ¶¶ 6-8, Doc. # 17, Attach. 1; CSOF ¶¶ 1-3.)
13 Specifically, the Red Bull Complaint alleges that, while attending an event called “Flugtag”
14 at Tempe Town Lake on April 29, 2006, Mr. Fahlman, though under Arizona’s legal drinking
15 age of 21 at the time, was served numerous Red Bull/Vodka cocktails. (Id.) The suit alleges
16 that Mr. Fahlman became severely intoxicated, proceeded to leave the event by car, drove
17 his Ford Mustang through a red light at the intersection of Apache Boulevard and Price Road,
18 and collided with a motorcycle driven by Officer Targosz. (Id.) On the following day, April
19 30, 2006, Officer Targosz died as a result of injuries sustained in that accident. (Id.)

20 As a result of that accident, the Targosz family filed suit for wrongful death against
21 Mr. Fahlman and a number of entities including those alleged to have organized, hosted and
22 supervised the “Flugtag” event. (Id.) Those entities include Red Bull North America, Red
23 Bull GMBH, Global Event Management, Professional Event Management, Alliance
24 Beverage Distributing Company, and Events Plus, Inc. – Colony’s insured. (Id.) Colony
25 initiated this declaratory relief action to resolve certain coverage issues related to the Events
26 Plus Policy that have been raised by the Red Bull Complaint. Specifically, the parties dispute
27 whether the Policy’s liquor liability exclusion (“Exclusion”) bars coverage of the claims
28 raised in the Red Bull Complaint. Colony and the Targosz Defendants have filed cross-

1 motions for summary judgment on this issue.¹ Events Plus – Colony’s insured – has failed
2 to serve or file any answer or responsive pleading in this action, and Colony has moved for
3 the entry of a default judgment against Events Plus.

4 **II. CROSS-MOTIONS FOR SUMMARY JUDGMENT**

5 **A. STANDARD**

6 Summary judgment is appropriate when “the pleadings, depositions, answers to
7 interrogatories, and admissions on file, together with affidavits, if any, show that there is no
8 genuine issue as to any material fact and that the moving party is entitled to summary
9 judgment as a matter of law.” Fed. R. Civ. P. 56(c). Thus, summary judgment is mandated,
10 “...against a party who fails to make a showing sufficient to establish the existence of an
11 element essential to that party’s case, and on which that party will bear the burden of proof
12 at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).

13 Initially, the movant bears the burden of pointing out to the Court the basis for the
14 motion and the elements of the causes of action upon which the non-movant will be unable
15 to establish a genuine issue of material fact. *Id.* at 323. The burden then shifts to the non-
16 movant to establish the existence of material fact. *Id.* The non-movant “must do more than
17 simply show that there is some metaphysical doubt as to the material facts” by “com[ing]
18 forward with ‘specific facts showing that there is a genuine issue for trial.’” *Matsushita Elec.*
19 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (quoting Fed. R. Civ. P.
20 56(e)). A dispute about a fact is “genuine” if the evidence is such that a reasonable jury
21 could return a verdict for the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
22 242, 248 (1986). The non-movant’s bare assertions, standing alone, are insufficient to create
23 a material issue of fact and defeat a motion for summary judgment. *Id.* at 247-48. However,
24 in the summary judgment context, the Court construes all disputed facts in the light most
25

26
27 ¹Defendants Red Bull North America, Inc. and Red Bull GMBH have joined in the
28 Targosz Defendants’ Motion for Summary Judgment (Doc. #36).

1 favorable to the non-moving party. *Ellison v. Robertson*, 357 F.3d 1072, 1075 (9th Cir.
2 2004).

3 **B. LIQUOR LIABILITY EXCLUSION**

4 The Court considers first whether Colony may rely upon the liquor liability exclusion
5 contained in the insurance contract. Because this action was brought in federal district court
6 on the basis of diversity of citizenship, Arizona substantive law applies. *See Vestar Dev. II,*
7 *LLC v. General Dynamics Corp.*, 249 F.3d 958, 960 (9th Cir. 2001). In the absence of
8 Arizona Supreme Court precedent, “federal courts exercising diversity jurisdiction may look
9 to other state court decisions, well-reasoned decisions from other jurisdictions, and any other
10 available authority to determine how the state court would resolve the issue.” *Santana v.*
11 *Zilog, Inc.*, 95 F.3d 780, 783 (9th Cir. 1996)(quoting *Burns v. Int’l Ins. Co.*, 929 F.2d 1422,
12 1424 (9th Cir.).

13 The Policy at issue in this action is a standard commercial general liability policy
14 issued by Colony for Events Plus. (TDSOF ¶ 1, CSOF ¶ 4.) It covers the insured for sums
15 it is legally obligated to pay for bodily injury and property damage resulting from an
16 occurrence. Coverage is subject to various exclusions. One such exclusion is the Liquor
17 Liability Exclusion (“Exclusion”) that excludes insurance coverage for:

18 “Bodily injury” or “property damage” for which any insured may be held
19 liable by reason of:

20 (1) Causing or contributing to the intoxication of any person;

21 (2) The furnishing of alcoholic beverages to a person under the legal
22 drinking age or under the influence of alcohol; or

23 (3) Any statute, ordinance or regulation relating to the sale, gift, distribution
24 or use of alcoholic beverages.

25 (TDSOF ¶ 4, CSOF ¶ 4.) Under the Policy, the Exclusion applies only if the insured is in the
26 business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages.

27 (TDSOF ¶ 4.) The Parties in this matter do not dispute that the insured is in the business of
28 distributing, selling, serving, and furnishing alcoholic beverages. (TDSOF ¶ 5.)

1 The parties, however, dispute the applicability of the Exclusion to the claims raised
2 by the Targosz Defendants in the Red Bull Complaint. Colony contends that the alleged
3 negligence falls squarely within the plain language of the Exclusion. Colony maintains that
4 “all of the allegations in the Red Bull Complaint are fundamentally premised upon the
5 injuries inflicted by Mr. Fahlman after he became intoxicated” and that “there are no
6 allegations of any injuries separate from those caused by Mr. Fahlman in his drunken
7 collision with Officer Targosz.” (Plaintiff’s Reply in Support of Its Cross-Motion, p. 3, Doc.
8 # 38.) Colony argues that, because Mr. Fahlman is alleged to have become intoxicated due
9 to the insured’s actions and/or failures to act, there can be no coverage under the Policy.

10 Although the Targosz Defendants concede that some of their claims do, in fact,
11 trigger the Exclusion, they argue that other allegations of the insured’s negligence, i.e., the
12 company’s organizing and supervising of the event, are separate from the precluded claims
13 and are covered under the insured’s Policy. (Reply of the Targosz Defendants, p. 5-6, Doc.
14 # 34.) Citing no authority to support the proposition, the Targosz Defendants argue that, to
15 the extent Events Plus “failed to check for intoxicated persons” and “failed to follow up and
16 take effective action concerning suspected irresponsible or criminal behavior,” such acts of
17 negligence fall outside the limits of the Policy’s liquor liability exclusion. (Id., p. 3.) The
18 Targosz Defendants argue that Colony must, therefore, honor its contractual duty to defend
19 and indemnify Events Plus with respect to those claims.

20 In cases involving disputes over the scope or applicability of a coverage exclusion,
21 the burden is on the insurer to demonstrate that the exclusion eliminates coverage. “If an
22 insurer desires to limit its liability under a policy, it should employ language which clearly
23 and distinctly communicates to the insured the nature of the limitation.” *Coconino County*
24 *v. Fund Adm’rs Ass’n*, 719 P.2d 693, 697 (Ariz. Ct. App. 1986)(citing *Sparks v. Republic*
25 *Nat’l Life Ins. Co.*, 647 P.2d 1127, 1133 (Ariz. 1982)). Although exclusionary clauses are
26 to be narrowly construed against the insurer in Arizona, rules of construction are applied
27 where there is doubt or ambiguity, and plain language requires no construction. *See Morari*
28 *v. Atlantic Mut. Fire Ins. Co.*, 468 P.2d 564, 566 (Ariz. 1970). Here, neither side contests

1 the clarity or prominence of the Exclusion, and many courts have found similarly worded
2 exclusions to be unambiguous. *See, e.g., Fraternal Order of Eagles v. Gen. Acc. Ins. Co.*,
3 792 P.2d 178, 181 (Wash. Ct. App. 1990).

4 Though the parties do not dispute the clarity or validity of the Exclusion, they do, as
5 described above, dispute the applicability of the Exclusion to the claims raised in the Red
6 Bull Complaint. The Arizona appellate courts have never discussed the applicability or
7 scope of a liquor liability exclusion. In determining the scope of a liquor liability exclusion,
8 however, most other courts have made the distinction between (a) allegations arising directly
9 out of or dependent upon the sale of alcohol, the service of alcoholic beverages, or the
10 causing of a person's intoxication, and (b) allegations based in more general theories of
11 negligence which could arise in contexts completely unrelated to alcohol. *See, e.g., Capitol*
12 *Indem. v. Blazer*, 51 F. Supp 2d 1080 (D. Nev. 1999)(citing cases).

13 For example, in *Paradigm Ins. Co. v. Texas Richmond Corp.*, 942 S.W. 2d 645 (Tex.
14 Ct. App. 1997), an insurer instituted suit for declaratory judgment seeking a determination
15 of its duty to defend its insured who operated a nightclub that served alcoholic beverages to
16 its patrons. The insured had been sued for negligence in a separate cause of action as the
17 result of a motor vehicle accident that occurred in its parking lot and involved an intoxicated
18 patron. Similar to the allegations in the Red Bull Complaint, the claims for negligence in
19 the underlying suit included claims that the insured failed to monitor patrons for intoxication,
20 failed to deter or prevent intoxicated patrons from driving after leaving, and failed to
21 adequately train its employees. Additionally, the suit included claims that the insured not
22 only failed to select, hire and supervise competent employees, but also failed to hire and
23 supervise a competent third party valet service. The insured's commercial general insurance
24 policy contained a liquor liability exclusion identical to the one at issue in the case at bar.

25 After Paradigm instituted its separate suit for declaratory judgment, seeking a
26 determination of its duty to defend the underlying negligence claims, the parties filed cross
27 motions for summary judgment. Paradigm – the insurer – alleged that, as a matter of law,
28 the policy's liquor liability exclusion excluded coverage for liquor related incidents such as

1 the one that formed the basis for the underlying negligence suit. Paradigm maintained it had
2 no duty to defend the insured because the negligence claims, however pled, arose out of the
3 provision of alcohol. *See id.* at 649. Conversely, the insured argued that the allegations of
4 negligent hiring and supervision of the valet service and vicarious liability for the acts of the
5 valet service were sufficiently independent of the alcohol based claims to potentially state
6 claims for which there was coverage. *See id.*

7 Finding that each of the allegations in the underlying suit – including those involving
8 the third party valet service – arose out of the insured’s business of selling or serving alcohol,
9 the court concluded that the claims fell within the policy exclusion and that the insurer had
10 no duty to defend the insured. *See id.* at 651. Rejecting the insured’s arguments that the
11 negligent hiring and supervision claims should be distinguished from those claims involving
12 the service of alcohol, the court stated:

13 [T]he parties agree that it is not the cause of action alleged that is
14 determinative “but the facts giving rise to the alleged actionable
15 conduct.” In determining the applicability of the exclusion, we must
16 focus on the origin of the damages and not the legal theories asserted.
17 An examination of Butler’s position reveals that each and every
18 allegation contained therein arises out of the business of selling or
19 serving alcohol to or causing or contributing to the intoxication of
20 Moraczewski.

21 *Id.* (citations omitted).

22 In its Cross-Motion and Reply, Colony cites several other cases in support of the
23 proposition that allegations of secondary negligence such as negligent hiring and supervision
24 or negligent organizing and monitoring are barred under a liquor liability exclusion when
25 they are fundamentally premised upon injuries caused by the negligent furnishing of alcohol.
26 In one such recent case, *Lankford v. Scottsdale Ins. Co.*, the Delaware Supreme Court
27 affirmed a decision by the trial court concluding that a liquor liability exclusion barred
28 coverage of all claims resulting from a car accident caused by the insured’s intoxicated
employee. *See Lankford*, 947 A.2d 1121 (Del. 2008), *affm’g and ordering for publication*
Scottsdale Ins. Co. v. Lankford, C.A. No. 07C-06-254 RRC, 2007 WL 4150202, (Del. Super.
Ct. Nov. 21, 2007).

1 The underlying tort action in *Lankford* was premised upon primary allegations that
2 the insured caused or contributed to the intoxication of the individual who caused the
3 accident as well as multiple allegations of secondary negligence including, among other
4 things, (1) the negligent hiring, training, maintaining, supervision, retention, and control of
5 employees, (2) the failure to institute policies and procedures regarding the service of
6 alcohol, and (3) the failure to provide alternative transportation. Like the Targosz
7 Defendants here (Reply of the Targosz Defendants, p.3), the insured in *Lankford* argued that
8 the claims of negligent hiring and supervision and other like claims constituted a separate
9 occurrence from causing or contributing to the intoxication because they were alleged to have
10 occurred after the intoxication. See *Lankford*, 2007 WL 4150212 at *3.

11 Though the insured conceded that its primary allegation was excluded by the liquor
12 liability exclusion, it argued that any allegations that the insured had failed to supervise or
13 control after the intoxication occurred were not subject to the exclusion. The court, however,
14 specifically rejected that argument. Concluding that the allegations of secondary negligence
15 were fundamentally premised on a claim that was excluded by the terms of the policy – the
16 negligent furnishing of alcohol – and the facts giving rise to it, the Court found that the liquor
17 liability exclusion barred coverage for the negligent furnishing of alcohol and all other
18 related claims. See 2007 WL 4150212 at *8.

19 Numerous courts have construed and applied liquor liability exclusions to claims such
20 as those asserted by the Targosz Defendants in the Red Bull Complaint. Indeed, the vast
21 majority of cases discussing the scope or applicability of a liquor liability exclusion have
22 held that, where other negligence claims are so inextricably intertwined with the negligent
23 provision of alcohol, coverage of those claims is precluded under a liquor liability exclusion.
24 See, e.g., *Prop. Owners Ins. Co. V. Ted's Tavern, Inc.*, 853 N.E. 2d 973 (Ind. Ct. App. 2006)
25 (finding that allegations of negligently hiring, training, and supervising were general
26 “rephrasings of the “core negligence” claim of causing or contributing to the drunk driving
27 and were therefore also excluded from coverage); *Boudreaux v. Siarc, Inc.*, 714 So. 2d 49
28 (La. Ct. App 1998)(holding that allegations of negligent training and supervision were not

1 independent of the negligent furnishing of alcohol to a minor); *Cusenbary v. U.S. Fid. and*
2 *Guar. Co.*, 37 P.3d 67, 70 (Mont. 2001)(concluding that insured’s negligent operation and
3 mismanagement of tavern directly related to the negligent service or sale of alcohol and was
4 excluded from coverage); *Kovesdy v. Utica Fire Ins. Co.*, 695 N.E.2d 1165 (Ohio Ct. App.
5 1997)(rejecting argument that the insured’s liability for failing to check identification,
6 permitting intoxicated individuals to leave the premises, and failing to notify the police was
7 separate from the negligent provision of alcohol and holding that liquor liability exclusion
8 precluded those claims); *Cf. Prince v. Buckeye Union Ins. Co.*, No. 92-CA-6, 1992 WL
9 362578 (Ohio Ct. App. Dec.2, 1992)(unpublished)(holding that claim that arose from return
10 of confiscated keys to intoxicated patron was analogous to negligent entrustment claim, could
11 have occurred without sale or service of alcohol, and therefore did not fall within liquor
12 liability exclusion).

13 *Capitol Indemnity v. Blazer* illustrates well the distinction between allegations arising
14 directly out of or dependent upon alcohol and allegations based on more general theories of
15 negligence which could arise in contexts unrelated to alcohol. 51 F. Supp 2d 1080 (D. Nev.
16 1999). Like several of the aforementioned cases, *Capitol Indemnity* also involved a
17 declaratory judgment action wherein the insurer sought a determination that it had no duty
18 to defend or indemnify the insured against suit pursuant to the terms of the insurance policy’s
19 exclusion provisions. 51 F. Supp 2d at 1082. The insured in that case had been sued under
20 theories of both negligence and intentional tort after two of its intoxicated patrons assaulted
21 another patron and left him with serious bodily injuries.

22 In determining that some of the claims in the underlying suit were covered by the
23 policy’s liquor liability exclusion and others were not,² the court drew a distinction between
24 claims that could only be brought upon an establishment serving or selling alcohol and
25 claims that could be brought against any establishment on general negligence grounds: “The

26
27 ²The court in *Capitol Indemnity* separately concluded that all of the claims in the
28 underlying action were barred under the policy’s assault and battery exclusion. *See id.* at
1088.

1 important factor which reconciles the different results is the nexus between the allegations
2 and the consumption of alcohol.” *Id.* at 1089. Concluding that the liquor liability exclusion
3 did not bar coverage for those portions of the claims alleging “simple negligence” such as
4 failure to warn, failure to intercede, and failure to promptly request police assistance when
5 it became likely an assault and battery would occur, the court stated:

6 The viability of these allegations does not depend upon Blazer’s selling
7 or service of alcohol, nor do these claims necessarily arise out of the
8 causing or contributing to any person’s intoxication. Like the situation
9 in *J.A.J.*, it is not unreasonable to imagine these claims arising in any
number of non-alcohol related contexts where the insured becomes
aware of developing antagonism between two patrons.

10 *Id.* at 1090.

11 In applying these principles to the present case, this Court concludes that the
12 allegations in the Red Bull Complaint are more akin to those in *Paradigm* and *Lankford*
13 where the allegations of secondary negligence were not sufficiently distinct or independent
14 from the negligent provision of alcohol but were, in fact, inextricably intertwined with those
15 claims. As Colony points out in its Cross-Motion for Summary Judgment, the Targosz
16 Defendants allege the following in their underlying state court complaint:

17 Defendants created this dangerous alcohol-driven environment despite
18 the devastating and deadly role of alcohol in a high percentage of traffic
19 accidents which was reasonably foreseeable to Defendants* * *
20 Defendants’ acts constitute willful and wanton conduct in that
21 Defendants knew that they were creating, and had created, an extremely
22 dangerous Red Bull “Flugtag” event * * * in which there was utter lack
of alcohol control or supervision; in which there were multiple
violations of liquor control statutes and; in which Defendants totally
disregarded and deviated from sound liquor control industry standards
for events of this type.

23 (CSOF ¶ 5, TDSOF Exhibit 1.)

24 This Court agrees that the allegations raised against the insured in the Red Bull
25 Complaint are premised upon the particular type of risk that was specifically excluded from
26 the Events Plus Policy. The Red Bull Complaint does not contain a single allegation of
27 tortious conduct that is divorced from the serving of alcohol, and the Complaint does not
28 assert any claim for damages independent of the injuries caused by Mr. Fahlman in his

1 intoxicated state. Indeed, unlike *Paradigm* and *Ted's Tavern*, the underlying state suit here
2 does not even involve separate claims for negligent hiring or vicarious liability for third party
3 negligence but instead simply packages multiple theories of negligent conduct under one
4 general claim for negligence. This Court finds, however, that regardless of the manner in
5 which these theories of negligence have been pled, they are not sufficiently separate and
6 distinct from the provision of alcohol so as to avoid application of the Policy's liquor liability
7 exclusion.

8 To conclude otherwise would only allow the parties to render such exclusions
9 essentially meaningless through artful pleadings and would allow them to circumvent the
10 terms and intent of the policy and its exclusions. As the court stated in *Ted's Tavern*:

11 The events outlined in Counts II and IV simply are not wholly
12 independent of "carelessly and negligently" serving and continuing to
13 serve alcoholic beverages to Wickliff when the defendants knew or
14 should have known he was intoxicated and soon thereafter could be
15 driving drunk. To the contrary, the nuisance and negligent hiring,
16 retaining and supervision are so inextricably intertwined with the
17 underlying negligence that there is no independent act that would avoid
[the Liquor Liability] exclusion. . . [W]hile a valiant effort to procure
coverage, the creative pleading of Counts II and IV cannot hide the
reality that the immediate and efficient cause of the injuries was drunk
driving precipitated by the negligent service of alcohol.

18 *Ted's Tavern*, 853 N.E.2d at 983.

19 This Court is confident that Arizona would adopt the same analysis as that articulated
20 in the vast majority of cases that have considered this issue. In applying those principles to
21 this case, this Court finds that the allegations raised by the Targosz Defendants in their Red
22 Bull Complaint are not sufficiently independent of or distinct from allegations that the
23 insured either negligently furnished alcohol or caused or contributed to the intoxication of
24 Mr. Fahlman. Indeed, no other claim in the underlying suit can be supported without
25 evidence of Mr. Fahlman's intoxication. Because of the direct nexus between these
26 allegations and the furnishing of alcohol, the Court concludes that the claims alleged in the
27 Red Bull Complaint fall within the scope of the Policy's liquor liability exclusion as a matter
28

1 of law. Accordingly, Colony’s Cross-Motion for Summary Judgment will be granted, and
2 this portion of the Targosz Defendants’ Motion for Summary Judgment will be denied.

3 **B. INDISPENSABLE PARTIES AND RIPENESS**

4 Again citing no authority in support of their position, the Targosz Defendants also
5 argue in their Motion for Summary Judgment that “Colony had no reason to sue the Targosz
6 Defendants at this time.” (Motion, p. 6). Specifically, they maintain that “Colony’s coverage
7 argument is solely with Events Plus” and contend that this declaratory relief action is
8 premature as to the them as they may never even obtain a judgment or settlement against
9 Events Plus. (Id., p. 6-7.) Conversely, Colony argues that the Targosz Defendants are
10 indispensable parties to this action and that the Declaratory Action is ripe for consideration.
11 (Cross-Motion, p. 7-8.)

12 Under Fed. R. Civ. P. 19(a), a person who is subject to service of process and whose
13 joinder will not deprive the court of subject-matter jurisdiction *must* be joined as a party if
14 (1) in the person’s absence the court cannot accord complete relief among the existing
15 parties, or (2) the person claims an interest relating to the subject of the action and is so
16 situated that the disposition of the action in the person’s absence may, as a practical matter,
17 impair or impede the person’s ability to protect that interest or leave any of the existing
18 parties subject to a risk of incurring multiple or inconsistent obligations because of the
19 interest.

20 It is well-settled that individuals in the position of the Targosz Defendants are
21 generally considered necessary parties in a declaratory judgment action brought to determine
22 insurance coverage for the claim. *See, e.g., Greenberg v. Fireman’s Fund Ins. Co.*, No. CV-
23 07-1554-PHX-DGC, 2007 WL 4105990, (D. Ariz. Nov. 16, 2007) (citing *U. S. Fire Ins. Co.*
24 *v. Milton Co.*, 938 F. Supp. 56, 57 (D.D.C. 1996); *Fed. Kemper Ins. Co. v. Rauscher*, 807
25 F.2d 345, 354 n. 5 (3rd Cir. 1986)(“[I]n a declaratory judgment proceeding involving an
26 [insurance] policy, an injured person is a ‘necessary and proper’ party.”)(citation omitted);
27 *U.S. Fid. and Guar. Co. v. Ditoro*, 206 F. Supp. 528, 532-33 (M.D. Pa. 1962) (the injured
28 party is “a necessary and proper party because the injured party has a material interest in the

1 outcome of the suit”); *Georgia-Pacific Corp. v. Sentry Select Ins. Co.*, No. 05-CV-826-DRH,
2 2006 U.S. Dist. LEXIS 33975, at *26, 2006 WL 1525678, at *8 (S.D. Ill. May 26, 2006)
3 (“[W]hen dealing with an issue of insurance coverage, the underlying claimants are necessary
4 parties, whether the declaratory judgment action is filed by the insured or the insurer.”)).

5 A decision in this case that coverage is precluded under the Policy’s liquor liability
6 exclusion could affect the Targosz Defendants’ ability to recover damages should they
7 prevail in their underlying suit. Because they have an interest relating to the subject of this
8 suit and their absence may, as a practical matter, impair their ability to protect that interest,
9 this Court finds that the Targosz Defendants are a necessary party to this action under Fed.
10 R. Civ. P. 19(a).

11 To the extent the Targosz Defendants maintain that this action is premature as against
12 them as they have not yet obtained an agreed settlement or a final judgment against the
13 insured, this Court also disagrees. The Supreme Court and the Ninth Circuit have frequently
14 held that a declaratory judgment action brought by an insurer solely for the purpose of
15 determining issues of coverage or its duty to defend and indemnify is sufficiently ripe for
16 judicial review – even when the underlying liability of its insured has not been adjudicated.
17 *See Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273-274, 61 S. Ct. 510, 85 L. Ed.
18 826 (1941); *Am. States Ins. Co. v. Kearns*, 15 F.3d 142, 143 (9th Cir. 1994); *Aetna Cas. &*
19 *Sur. Co. v. Merritt*, 974 F.2d 1196, 1199 (9th Cir. 1992).

20 Because the Targosz Defendants are an indispensable party under Fed. R. Civ. P. 19
21 and this action is ripe for consideration, this portion of the Targosz Defendants’ Motion for
22 Summary Judgment is denied.

23 **IV. DEFAULT JUDGMENT**

24 Pursuant to Fed. R. Civ. P. 55(b)(2), Colony has also moved for default judgment
25 against Defendant Events Plus (Doc. #25). Having reviewed the pleadings of record and the
26 Affidavit submitted by Colony’s counsel, and being fully advised, this Court finds that
27 Defendant Events Plus was properly served with process and failed to plead or otherwise
28 defend Colony’s Complaint for Declaratory Relief (Doc. #1) within the time period

1 prescribed by law, that the default of Events Plus was duly entered by the Clerk of this Court
2 on February 20, 2008 (Doc. #19), that Events Plus is neither an infant or incompetent, and
3 that Colony Insurance is entitled to affirmative relief against Events Plus as specified herein.

4 Based on the foregoing findings, and for good cause appearing therefore,

5 **IT IS ORDERED** granting Plaintiff Colony Insurance Company's Cross-Motion for
6 Summary Judgment Against All Defendants (Doc. #27). Accordingly, Colony has no
7 obligation to defend and/or indemnify Events Plus against any and all claims or conduct
8 alleged in Brigitte Targosz, et al. v. Red Bull North America, Inc., et al., Maricopa County
9 Superior Court Case No. CV2006-018504.

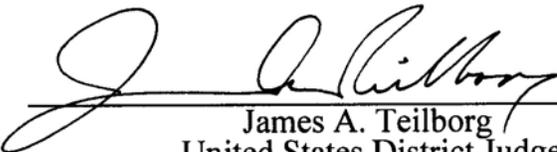
10 **IT IS FURTHER ORDERED** denying the Motion for Summary Judgment of the
11 Targosz Defendants (Doc. # 16).

12 **IT IS FURTHER ORDERED** denying Colony's request for attorneys' fees without
13 prejudice at this time and with leave to file a motion for attorneys' fees and non-taxable
14 expenses pursuant to L. R. Civ. 54.2.

15 **IT IS FURTHER ORDERED** awarding default judgment against Events Plus (Doc.
16 #25) and in favor of Colony. Accordingly, Colony has no obligation to defend and/or
17 indemnify Events Plus against any and all claims or conduct alleged in Brigitte Targosz, et
18 al. v. Red Bull North America, Inc., et al., Maricopa County Superior Court Case No.
19 CV2006-018504.

20 **IT IS FURTHER ORDERED** directing the Clerk of the Court to enter judgment
21 accordingly.

22 DATED this 30th day of September, 2008.

23
24
25 
26 James A. Teilborg
27 United States District Judge
28