

Apollo Education Group, Inc. v. National Union Fire Insurance Co. of Pittsburg, PA

Year: 2019

Court: Supreme Court of Arizona

Case Number: CV-19-0229-CQ

In its brief, UP argues for the applicable standard to apply in Arizona when determining whether an insurer unreasonably withholds consent to an insured's settlement with shareholders in a breach of contract under a policy where an insurer has no duty to defend. UP argues that: In 1957, this Court held that the standard for determining if an insurer unreasonably withheld consent to settle is whether the insured gave equal consideration to its own interests and to its insured's interests. Arizona courts still apply the equal-consideration standard. The main case that this Court relied on in the 1957 Farmers opinion similarly adopted the standard of equal consideration. Whether the duty to defend is present does not impact this analysis. What standard applies is a question of law. But how that standard applies is a question of fact. The Ninth Circuit—and Apollo and National Union, for that matter— regard this issue as an “either-or” proposition. Under Arizona law, it is not an “either-or” proposition.

This brief was drafted pro bono by David L. Abney of Ahwatukee Legal Office, P.C.