

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

FEDERAL INSURANCE COMPANY,

Plaintiff,)

v.)

C.A. No. 06-02-248 (JRJ)

HILCO CAPITAL, LP and)

CONGRESS FINANCIAL)

CORPORATION,)

Defendants.)

ORDER

AND NOW, TO WIT, this 5th day of August, 2008, the Court having heard and duly considered Federal Insurance Company's ("Federal") Motion for Reargument pursuant to *Del. Super. Ct. R. 59*, and Defendant's response thereto, **IT IS HEREBY ORDERED** that Federal's Motion is **GRANTED in part** and **DENIED in part**.

The Court erred in its June 6, 2008 Opinion by failing to decide as a matter of law whether Federal, the excess carrier, had an implied duty under Missouri law to negotiate with the Insureds.¹ This is a question of law, not of fact. As such, it is for the Court and not a jury to decide. After reviewing the excess policy at issue and the applicable Missouri law, the Court is

¹ *Federal Ins. Co. v. Hilco Capital, LP*, 2008 WL 2468870, at *5 (Del. Super.).

satisfied that it should have granted summary judgment in favor of Federal on this issue. Accordingly, the Court vacates its June 6, 2008 Memorandum Opinion and issues a Memorandum Opinion dated August 5, 2008. The Court **DENIES** the remainder of Federal's Motion for Reargument.

Jan R. Jurden, Judge