

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 5<sup>th</sup> 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.<sup>1</sup> 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

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<sup>1</sup> *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.

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Jan R. Jurden, Judge