

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

P.O. BOX 746
COURTHOUSE
GEORGETOWN, DE 19947

April 7, 2003

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RE: ***Byard Layton v. The Hartford Fire Insurance Company***
C.A. No. 02C-05-003

Dear Counsel:

This is my decision on Plaintiff's motion to amend the complaint. Plaintiff's motion to amend the complaint is denied. Plaintiff's original cause of action seeks uninsured motorist benefits for damages resulting from a car accident. Plaintiff seeks to amend his complaint to add a cause of action for a denial of PIP benefits.

Pursuant to 21 *Del. C.* § 2118 (g)((4), "[n]o insurer or self-insurer shall join or be joined in an action by an injured party against a tortfeasor for the recovery of damages by the injured party and/or the recovery of benefits paid by the insurer or self-insurer." The Hartford stands in the shoes of an uninsured tortfeasor. *Williams v. Limpert*, Del. Super., C.A. No. 97C-01-013, Terry J. (July 3, 1997) (ORDER). The Delaware Supreme Court has emphasized that there is a clear legislative intent to separate litigation surrounding "the statutory rights to PIP benefits from any independent cause of action at common law against a tortfeasor for personal injury." *Harper v. State Farm Mut. Auto. Ins. Co.*, 703 A.2d 136, 139 (Del. 1997).

Accordingly, Plaintiff will not be permitted to amend his complaint to add a claim for the denial of PIP benefits, since he is statutorily precluded from joining these claims.

_____ ***IT IS SO ORDERED.***

Very truly yours,

Richard F. Stokes

cc: Prothonotary's Office