

I. INTRODUCTION

Defendant American National Fire Insurance Company (“American National”) has filed a Motion to Sever PIP and UIM Claims. Upon consideration of the evidence presented at oral argument and a review of American National’s motion, plaintiff’s response, and further correspondence from counsel addressing this issue, this court concludes American National’s motion should be **GRANTED.**

II. BACKGROUND

Plaintiff Starline P. Crumpton (“Crumpton”) claims to have suffered injuries when the bus in which she was riding was struck by a car operated by a third party. Crumpton initially sued only her own insurance carrier, State Farm Mutual Automobile Insurance Company (“State Farm”) for PIP¹ and UIM² benefits. Crumpton later amended her complaint to add claims against American National, the carrier for the bus in which she was riding. On October 1, 2003, American National filed a Motion to Sever PIP and UIM Claims. On October 3, 2003, Crumpton filed her response. Oral argument on the motion was held October 21, 2003. Counsel for both American National and Crumpton supplemented their arguments in letters received by the court October 24, 2003.

¹ Personal Injury Protection – sometime referred to as “no fault” insurance.

² Un-/Under-Insured Motorist.

III. DISCUSSION

In *Layton v. The Hartford Fire Insurance Co.*, the court found 21 Del. C. § 2118(g)(4) precluded the plaintiff from amending his complaint to include both PIP and uninsured motorist claims.³ The court in *Layton* recognized “[t]he Delaware Supreme Court has emphasized that there is a clear legislative intent to separate litigation surrounding ‘the statutory right to PIP benefits from any independent cause of action at common law against a tortfeasor for personal injury.’”⁴

Crumpton argues that notwithstanding the decision in *Layton*, the court should consider all the subsections of 21 Del. C. § 2118(g) (“§ 2118(g)”) as whole and come to the conclusion that § 2118(g)(4) does not preclude joinder of PIP and UIM claims in a single lawsuit. The court finds Crumpton’s arguments unavailing. Even if § 2118(g) did not preclude joinder of the PIP and UIM claims, § 2118(h) precludes introduction into evidence of PIP amounts in an action against the tortfeasor.⁵ The court finds that this would be impossible if the PIP and UIM

³ 2003 WL 22016865 (Del. Super.).

⁴ *Id.* (internal citation omitted).

⁵ 21 Del. C. § 2118(h) states in relevant part: “Any person eligible for benefits described in paragraph (2) or (3) of subsection (a) of this section [the PIP provisions], . . . is precluded from . . . introducing into evidence in an action for damages against a tortfeasor those damages for which compensation is available under paragraph (2) or (3) of subsection (a) . . .”

claims were to proceed as a single action. The court finds the UIM carrier stands in the shoes of an uninsured tortfeasor.⁶

IV. CONCLUSION

For the above reasons, the court finds 21 Del. C. § 2118(h) precludes joinder of PIP and UIM claims in the same lawsuit. Therefore, American National's Motion to Sever PIP and UIM Claims is **GRANTED**.

Plaintiffs shall tender to the Prothonotary the \$175.00 filing fee, a copy of the complaint, and a new Case Information sheet citing the original case and case number within 10 days. The Prothonotary shall assign the no-fault (PIP) claim a new case number and assign the case to Judge Scott.

Calvin L. Scott, Jr.
Superior Court Judge

⁶ *Layton*, 2003 WL 22016865.