



October 2022 NEWSLETTER

# UM/UIM Coverages in Car Accidents

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## **Understanding the Limited Tort/Full Tort Election**

Full tort coverage allows parties injured in a car accident to sue the at-fault driver for non-monetary damages, including pain and suffering. Auto insurance pays for medical bills and damages, but without full tort coverage, injured parties are unable to seek compensation for loss of quality of life due to the car accident.

Electing the limited tort option can seem appealing at first glance since it immediately saves drivers money on their monthly premiums. However, Pennsylvania motorists say the savings of their limited tort policies were not worth it after being seriously injured in a car accident. It may be more expensive to have full tort coverage, but the ability to claim damages for pain and suffering, without regard to the severity of those injuries after a car accident is invaluable.

Uninsured motorist (UM) and underinsured motorist (UIM) insurance coverages are not required to be included on Pennsylvania motorists' auto insurance policies. Even though they can be waived, they are the two most important coverages on drivers' insurance policies that protect them in the event they are involved in a serious car accident.

Pennsylvania laws consistently change, and the type of auto insurance coverage motorists have can significantly impact the way they are protected in the event of a car crash. It is important to review and understand your rights under full tort and limited tort coverage with an experienced attorney and to ensure that you have adequate UM/UIM coverage.

## **Matthew Bilker**

Think you have a case? Consult with our Litigation experts.

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# **Estate Planning**

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Working with an experienced estate planning attorney to create an estate plan is the only way to guarantee that your estate and final affairs are administered and distributed as you intend. It also makes the administration of your estate, after your death, much more efficient and, therefore, more economical. Proper estate planning allows you to clearly state who your beneficiaries are, who is to handle your affairs in the event that you are not able, and is able to account for the various tax consequences that may arise depending on the makeup of your estate, whether it be income, inheritance or estate tax.

# Power of Attorney vs. Guardianship

## Power of Attorney

A durable power of attorney is a legal document by which you appoint someone to act on your behalf and take care of your financial affairs. A durable power of attorney remains effective even after the principal (you, the signer) becomes incapacitated.

## Guardianship

A guardianship is a legal relationship granted by the court when it finds an individual to have lost capacity and appoints a guardian for his or her care.



Pursuing a guardianship can be a costly endeavor as it requires a petition to the Orphans' Court of the county in which the alleged incapacitated person lives and requires specific attachments to be included. Creating a durable power of attorney prior to incapacity avoids the need to petition for guardianship saving time and money. A durable power of attorney can also be incredibly useful even when the principal is not incapacitated. Perhaps the most

important difference is when a person executes a power of attorney, they are able to choose the individual they want to handle their financial matters, whereas a guardian is chosen by the judge in a guardianship proceeding.

There is no monitoring or training involved under a power of attorney which affords your agent significant power over your assets and affairs, so it is important to be sure of the qualifications and integrity of the person you choose as your power of attorney.



## Probate vs. Non-Probate Assets

Estate planning involves more than simply drafting a will: it is essential to consider both probate property and non-probate property in your estate planning.

### **What is “Probate”?**

Probate is the legal process by which the estate of a deceased individual is opened with your local Register of Wills Office (which is a department of the court system) and a personal representative is appointed. It is the responsibility of the personal representative to pay all the debts and expenses of the Estate and then to distribute whatever money is left over (known as the “Residue”) to the beneficiaries of the estate.

Probate property is everything that the deceased individual owned in their name alone at the time of their death that did not have a beneficiary designation on it. Probate property is handled by the personal representative and ultimately distributed to the beneficiaries (whether named in a will or so designated by law in the absence of a will). It is important to coordinate the ownership of your property with what is provided in your will in order to ensure things goes the way you intended.

### **What is “Non-Probate” Property?**

Non-probate property is everything that passes outside of the estate, meaning it is either owned jointly with rights of survivorship with another or it has a named beneficiary. Joint property is a common form of non-probate property it passes to the surviving joint owner, regardless of what might be stated in the decedent’s will. Another common form of non-probate property is an IRA. IRA proceeds are paid to the designated beneficiary, regardless of what

proceeds are paid to the designated beneficiary, regardless of what your will might state. An IRA should always have a designated beneficiary to ensure the most favorable tax options.

An experienced estate planning attorney will always ask you to review your beneficiary designations as part of your estate planning.

## **Trusts**

Trusts are another type of non-probate property. There are many reasons why someone may want to consider a trust as part of their estate plan and that is yet another reason to create your estate plan with an experienced estate planning attorney so that you may thoroughly discuss this option. If a trust is part of your estate plan, it is important to coordinate your estate plan with the terms of any trusts.

## **Other Forms of Non-Probate Property**

Other forms of non-probate property include pension, profit sharing, and life insurance, which all pass to a designated beneficiary. Depending upon the terms of the estate plan and local law, if there is no designated beneficiary, the non-probate property may be paid to the surviving spouse or the decedent's estate.

### **Dan Coleman**

Need assistance with Estate Planning, Administration or a Guardianship? Consult with our Estate experts.

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# Orphans' Court Rules Changes

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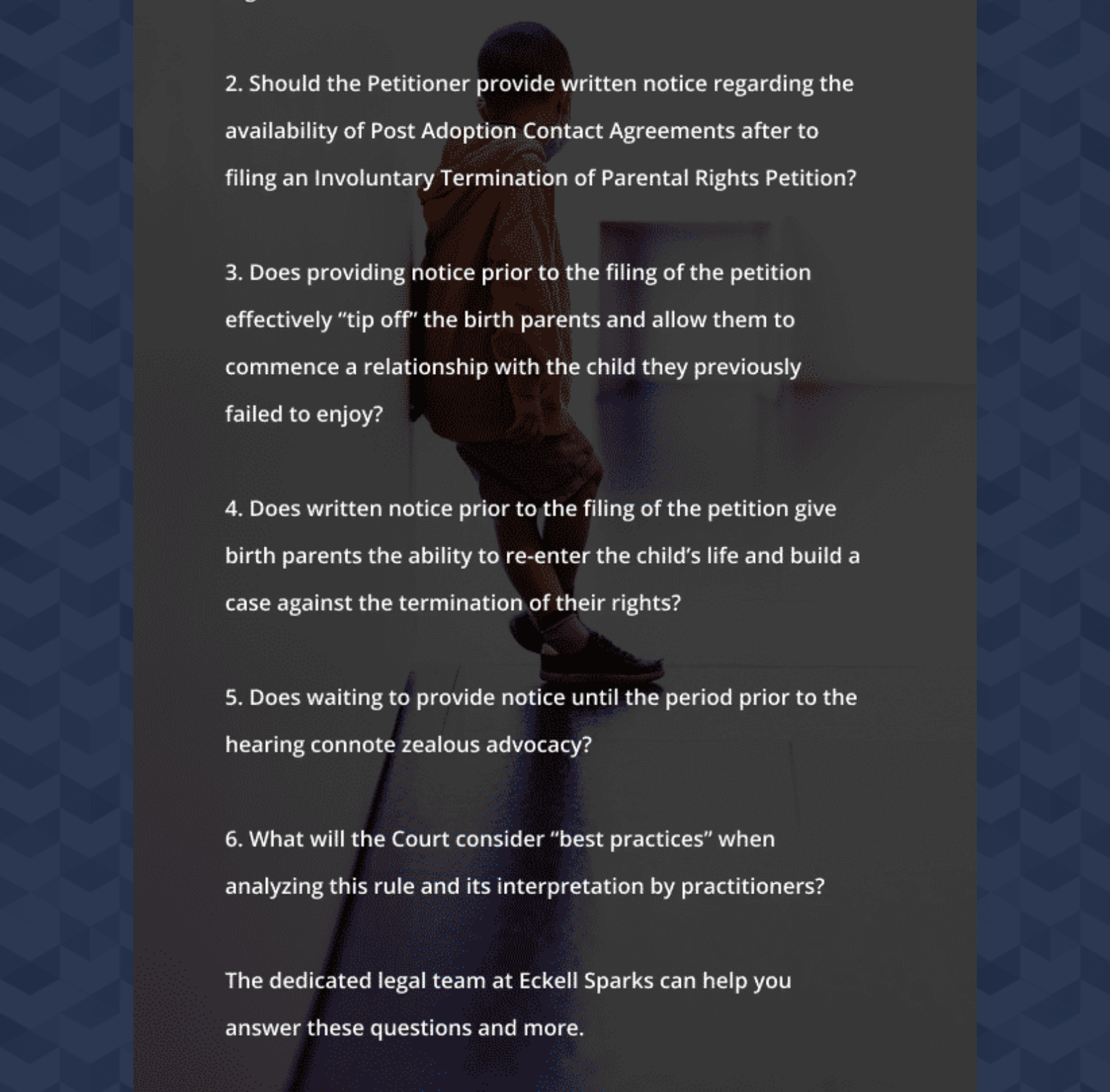
In July, 2021 the PA Supreme Court adopted changes to the Orphans' Court Rules regarding adoption, which became effective in July 1, 2022.

Notably, the adoption of Rule 15.10 has posed questions amongst practitioners and pro se filers, regarding proper notice due to birth parents when there is an Involuntary Termination of Parental Rights Petition filed with the Court.

Rule 15.10, requires filers of Involuntary Termination of Parental Rights Petitions to provide proof of written notice to the subject child's birth parents, regarding their ability to have a contact agreement regarding the child after adoption, within their petition, at the time of filing, via written verification. This rule however also allows filers to verify that such notice will be given prior to a hearing or that such notice could not be given after efforts were made by them to provide notice.

**These conflicting clauses pose the following questions for practitioners/pro se filers:**

1. Should one petitioner provide written notice regarding the availability of Post Adoption Contact Agreements known as PACA prior to filing an Involuntary Termination of Parental Rights Petition?



2. Should the Petitioner provide written notice regarding the availability of Post Adoption Contact Agreements after to filing an Involuntary Termination of Parental Rights Petition?

3. Does providing notice prior to the filing of the petition effectively “tip off” the birth parents and allow them to commence a relationship with the child they previously failed to enjoy?

4. Does written notice prior to the filing of the petition give birth parents the ability to re-enter the child’s life and build a case against the termination of their rights?

5. Does waiting to provide notice until the period prior to the hearing connote zealous advocacy?

6. What will the Court consider “best practices” when analyzing this rule and its interpretation by practitioners?

The dedicated legal team at Eckell Sparks can help you answer these questions and more.

### **Vasiliki Gouliaberis**

Need a Domestic or Orphans' Court attorney? Consult with our Family Law experts.

Consult with our Experts



The skilled *legal team* at ***Eckell, Sparks, Levy, Auerbach, Monte, Sloane, Matthews & Auslander, P.C.*** is ready to help answer your legal questions. Established in 1964, we've been dedicated to our clients for over half a century.

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