LIABILITY INSURANCE: NOTICE TO CARRIER MEANS NOTICE TO CARRIER

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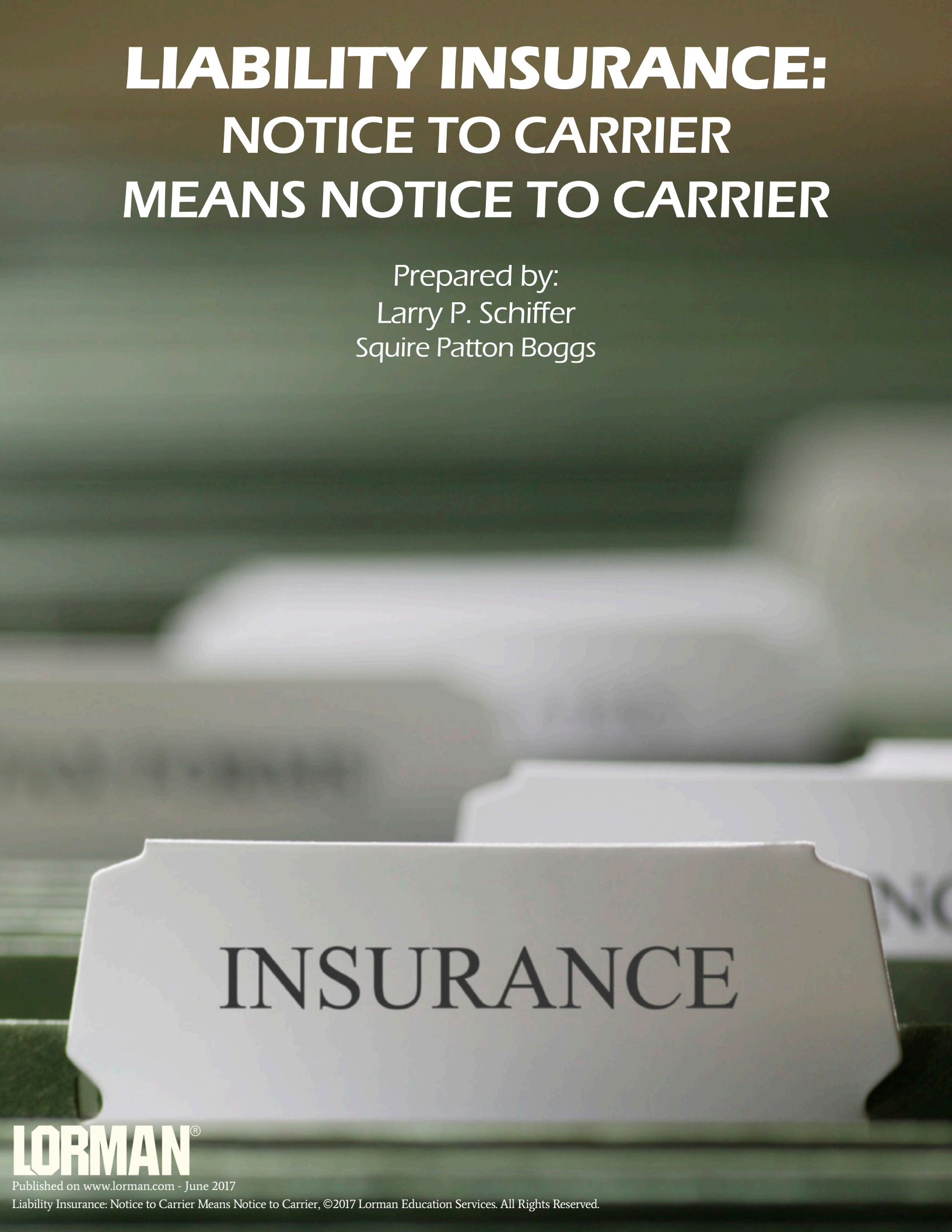

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Liability Insurance:
Notice to Carrier Means Notice to Carrier

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Notice requirements in liability insurance policies typically require that notice of a claim or lawsuit be given as soon as practicable and in writing to the insurance company. While the exact language differs from policy to policy, the concept of written notice to the insurance company without delay is fairly common. In the normal circumstance, where the policyholder gets sued, sending written notice of claim to its insurance carrier is not very complicated. Where the underlying claimant sues additional insureds arising from an accident on a construction site, notice issues can become more complicated.

A recent case provides a somewhat typical factual scenario and a few lessons. *BN Partners Associates, LLC v. Selective Way Ins. Co.*, No. 205 CA 16-00363, 2017 NY Slip Op 02213 (N.Y. App. Div. 4th Dep't Mar. 24, 2017). In this case, an insured obtained a commercial general liability policy from its insurance company. An employee of the insured was injured while working on property owned by one party and leased to another party under a subcontract between the insured and a general contractor. The insured worker sued the property owner, the lessee and the general contractor for the worker's personal injuries alleging negligence by the defendants. The owner, lessee and general contractor were all presumably named as additional insureds under an endorsement to the subcontractor's policy for the particular job.

After the underlying personal injury lawsuit was commenced, the general contractor's insurance carrier sent a letter to the subcontractor informing it of the lawsuit and advising the subcontractor to turn the matter over to its liability carrier. Also a voicemail message was left with the subcontractor's insurance agent following up on the letter. The owner/lessee/general contractor group eventually brought a declaratory judgment action against the subcontractor's carrier seeking a defense and indemnification for the underlying personal injury action some 17 months after the employee had commenced the underlying action. Both sides moved for summary judgment.

The question the court had to resolve was what kind of notice was required under the policy by the owner/lessee/general contractor team if they want the subcontractor's insurance company to defend and indemnify them in the lawsuit filed by the employee. The motion court found that notice was not provided by the owner and lessee, but that there was a question of fact about whether the general contractor had provided notice.

On appeal, the appellate court modified the order and granted summary judgment to the carrier. The court concluded that none of the plaintiffs provided the carrier with notice as required under the policy. The policy, held the court, unambiguously required an insured to provide the carrier with written notice of a claim or lawsuit and to send copies of any legal papers received. The court found that the carrier met its initial burden of establishing that plaintiffs failed to provide notice as a matter of law when its employee testified that it did not receive notice until nearly 17 months after the last date when plaintiffs learned of the underlying lawsuit and because plaintiffs offered no excuse for the delay.

The court found neither the letter to the subcontractor nor the voicemail to the insurance agent was adequate notice. The letter suffered from double hearsay and the voicemail was not notice in writing. The court also rejected the contention that the subcontractor's insurance agent was an agent of the carrier.

The lessons from this case are simple. If you are an additional insured you need to give notice of claim or suit to the carrier directly, without delay and in writing. Assuming that notice to the first named insured or the subcontractor in this case will suffice does not work. Direct written notice is required.