

# TO TENDER OR NOT TO TENDER - THAT IS THE QUESTION DIRECTORS & OFFICERS LIABILITY - CLAIMS MADE & REPORTED POLICY

IF YOU ARE ASKING THE QUESTION - TENDER! - REPORT TO THE CARRIER, DO NOT PASS GO!  
[CAVEAT: A CARRIER IS NOT OBLIGATED TO PAY ANY DEFENSE FEES AND COSTS BEFORE A MATTER IS REPORTED]

Do the allegations constitute a "Claim"?

Definition of Claim?  
-----

Not all definitions of claims are created equal. Some are very narrow such as "the service of a suit".

Claim often means...  
-----

1. Written demand for monetary damages or non-monetary relief [caveat - what is a writing?];
  2. Civil proceeding;
  3. Criminal proceeding; or
  4. Formal civil administrative or regulatory proceeding.
- ....against an Insured for a Wrongful Act.

**CAUTION:**  
FAILURE TO REPORT A "CLAIM"  
TO THE CARRIER WITHIN THE  
POLICY PERIOD OR THE DISCOVERY PERIOD (IF APPLICABLE)  
= NO COVERAGE - END OF  
STORY!!!!!!  
CALL YOUR E&O CARRIER.

If it is a "Claim" then what?

Most D&O policies are claims made and reported policies requiring that if a "Claim" is received by the "Insured" or the Insured is aware of the "Claim" it must be "Reported" to the carrier within the "Policy Period" or the "Discovery Period" if applicable.

If it is not a claim, are the allegations facts or circumstances that could give rise to a "Claim"?

If there are facts and circumstances that have not matured into a "Claim", but give rise to a potential claim, by submitting notice of those facts and circumstances to the carrier so that if it later matures into a "Claim" then most policies will "relate" back to the prior policy.

McGowan Program Administrators | Joel W. Meskin, Esq., CIRMS  
jmeskin@mcgowanins.com | 800.545.1538 x2240  
mcgowanins.com

© 2012 Joel W. Meskin

