

Comparison of Wachovia Proposal to Christensen Proposal

Policy Type: \$25MM X/S \$5MM
 Insureds: Buffalo Wild Wing Franchisees
 Revision Date: 3/6/2007

Coverage:	Wachovia Proposal:	Christensen Proposal:	Notes:	Which Proposal is Better for Franchisees?
Insurance Company(ies):	Markel & ACE	Lexington		Equal
Policy Type:	Non-Admitted	Non-Admitted		Equal
Limit:	\$25MM X/S \$5MM	\$25MM X/S \$5MM		Equal
Is risk manager for Buffalo Wild Wings an employee or ex-employee of the agency proposing coverage?	No	Yes	This creates the potential for a conflict of interest.	Wachovia
"Pay on Behalf" Wording?	Yes	Yes		Equal
"Duty to Defend" Wording?	Company needs to be informed of claims which could affect the policy.	Yes		Equal
Self Insured Retention?	No	Yes	A "Self Insured Retention" is a bad thing for insureds.	Wachovia
Amount of Self Insured Retention:	\$0	\$5,000,000	The insured needs to pay \$5,000,000 towards a claim before the "drop down" feature of the Christensen Excess Policy is triggered.	Wachovia
Retained Amount	No	Yes	A "Retained Amount" is a bad thing for insureds.	Wachovia
Retained Amount	\$0	\$5,000,000	The insured needs to pay \$5,000,000 towards a claim before the "drop down" feature of the Christensen Excess Policy is triggered.	Wachovia
Are "Monetary Damages" covered?	Yes, Follow Form	Yes		Equal
Is "Non-Monetary Relief" covered?	Yes, Follow Form	No	If the insured is sued and the plaintiff is provided equitable relief, the Wachovia policy would provide "follow form" coverage, while the Christensen policy would exclude such claims.	Wachovia
Does the policy contain an "anti-drop down" clause whereby exclusions in the underlying policy are made part of the Excess Policy?	Yes, Follow Form	Yes		Equal
Does the policy contain exclusions which apply, even if the underlying policies provide coverage for such claims?	Yes	Yes		Equal
Is the policy a "true" Umbrella?	No	No	"True" Umbrellas - for all intents and purposes - no longer exist in the marketplace. Almost all "Umbrellas" in the marketplace today are really modified Excess Policies, even though they are marketed as "Umbrellas." A "true" Umbrella "drops down" and pays ANY claim that the underlying policies exclude? Further, a "true" Umbrella contains no exclusions. In addition, a "true" Umbrella does not contain a "Self Insured Retention" or a "Retained Amount." As the Christensen policy contains both an "anti-drop down" exclusion, other exclusions, a "Self Insured Retention," and a "Retained Amount," it is not a "true" Umbrella. It is a modified Excess Policy.	Equal
What type of policy?	Modified Excess	Modified Excess		Equal
Does the policy "drop down" and pay claims if the underlying policy is exhausted by the payment of "Damages?"	Yes	No	The Christensen policy has a \$5,000,000 "Self Insured Retention" and "Retained Amount" which virtually eliminate "drop down" coverage.	Wachovia
Does the policy "drop down" and pay claims if the underlying policy is exhausted by the payment of "Non-Monetary Relief?"	Yes	No	The Christensen policy has a \$5,000,000 "Self Insured Retention" and "Retained Amount" which virtually eliminate "drop down" coverage. Further, the "drop down" component of the Christensen policy states that the policy, regardless of the \$5MM "Self Insured Retention" and "Retained Amount," will only "drop down" if the underlying policies are exhausted by the payment of "Damages," but not if they are exhausted by the payment of "Non-Monetary" Relief.	Wachovia
Does the policy "drop down" and pay claims if the underlying policy is exhausted by the payment of "Defense Costs?"	Yes	No	The Christensen policy has a \$5,000,000 "Self Insured Retention" and "Retained Amount" which virtually eliminate "drop down" coverage. Further, the "drop down" component of the Christensen policy states that the policy, regardless of the \$5MM "Self Insured Retention" and "Retained Amount," will only "drop down" if the underlying policies are exhausted by the payment of "Damages," but not if they are exhausted by the payment of "Defense Costs" Relief.	Wachovia
Is coverage provided for "occurrences" that take place during the policy period?	Yes	Yes		Equal
Is "Claims-Made" coverage provided over underlying policies that are written on a "Claims-Made" basis?	Yes, Follow Form	No	The Christensen policy responds on an "Occurrence" basis. It does not respond on a "Claims-Made" basis over underlying policies that are written on a "Claims-Made" basis. As such, there are many claims that the Wachovia policy would cover that the Christensen policy would not. It is common for underlying Employment Practices Liability policies and Employee Benefits Liability policies to be written on a "Claims-Made" basis.	Wachovia
Is coverage provided for Automobile Liability?	Yes, Follow Form	Yes, Follow Form		Equal

Coverage:	Wachovia Proposal:	Christensen Proposal:	Notes:	Which Proposal is Better for Franchisees?
Is coverage provided for Employers Liability?	Yes, Follow Form	Yes, Follow Form		Equal
Expected or Intended Injury Exclusion?	No, Follow Form	Yes		Wachovia
Contractual Liability Exclusion	No, Follow Form	Yes		Wachovia
Liquor Liability Exclusion	No, Follow Form	No		Equal
Workers Compensation & Similar Laws Exclusion?	No, Follow Form	Yes		Wachovia
ERISA Exclusion? (Employee Retirement Income Security Act)	Yes	Yes		Equal
Employment Related Practices Liability Exclusion?	No, Follow Form	Yes		Wachovia
Pollution Exclusion?	Yes	Yes		Equal
Aircraft Exclusion?	No, Follow Form	Yes		Wachovia
Watercraft Exclusion?	No, Follow Form	Yes	"Follow form" coverage provided by the Wachovia policy is better than the Christensen policy, which excludes Watercraft Liability. It should be noted that the Christensen policy would cover owned watercraft onshore at premises owned by the insured or non-owned watercraft under 26 feet in length which are not used to carry persons or property for a charge.	Wachovia
War Exclusion?	Yes	Yes		Equal
"Damage to Property" Exclusion?	No, Follow Form	Yes		Wachovia
"Damage to Your Product" Exclusion?	No, Follow Form	Yes		Wachovia
"Damage to Your Work" Exclusion?	No, Follow Form	Yes		Wachovia
"Damage to Impaired Property or Property Not Physically Injured" Exclusion?	No, Follow Form	Yes		Wachovia
"Recall of Products, Work or Impaired Property" Exclusion	No, Follow Form	Yes		Wachovia
"Electronic Data" Exclusion	No, Follow Form	Yes		Wachovia
Fungus/Mold Exclusion?	Yes	Yes		Equal
Lead Exclusion?	No, Follow Form	Yes		Wachovia
Asbestos Exclusion	Yes	Yes		Equal
Nuclear Exclusion?	Yes	Yes		Equal
"Securities and Financial Interest" Exclusion?	No, Follow Form	Yes		Wachovia
"Coverage Excluded or Sublimated by the Schedule Underlying Insurance" Exclusion?	No, Follow Form	Yes	The Christensen policy contains an exclusion that states that any exclusion contained in an underlying policy becomes part of the Christensen policy. This exclusion instantaneously converts the Christensen policy to a Modified Excess Policy (along with the "Retained Amount" and "Self Insured Retentions"). The Christensen policy is by no means a "true" Umbrella.	Equal
Silica Exclusion	Yes	Yes		Equal
"Violation of Statutes in Connection with Sending, Transmitting or Communicating any Material or Information" Exclusion?	No, Follow Form	Yes		Wachovia
"Other Personal and Advertising Injuries" Exclusion?	No, Follow Form	Yes		Wachovia
Professional Liability Exclusion?	No, Follow Form	Yes		Wachovia
Cross Suits Exclusion	No, Follow Form	Yes		Wachovia
Assault & Battery Exclusion?	No, Follow Form	No		Equal
Definition of "Bodily Injury" includes "mental injuries" and "loss of services"?	Yes, Follow Form	Yes		Equal
"Per Location" Aggregate?	Yes, Follow Form	Yes		Equal
Coverage for Punitive Damages, Where Not Prohibited By State Law?	Yes, Follow Form	Yes		Equal
Any warranty statements?	No	No		Equal

* Analysis based upon copies of Lexington Insurance Company Excess Policy to be used by Christensen. Changes to that policy would affect this analysis. This document is for internal use only.