

**STATE OF MICHIGAN**  
**14<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF MUSKEGON**  
**BUSINESS COURT DIVISION**

KMART OF MICHIGAN, INC., a Michigan  
corporation

Plaintiff/Counter-Defendant,

File No. 13-49059-CZ  
Hon. Neil G. Mullally

APPLE VENTURES, LLC, a Michigan  
Limited liability company,

Defendant/Counter-Plaintiff

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**OPINION**

The Plaintiff in this action is the tenant of the Defendant. The Plaintiff has filed a complaint alleging breach of the lease agreement and retaliatory eviction, and also requesting declaratory relief. The Defendant filed its answer and also a counter complaint averring breach of the lease agreement, and seeking possession of the leased premises and declaratory relief. The parties have answered their respective complaints and counter-complaints. Both parties have included affirmative and/or special defenses in their answers. The Defendant has now filed a motion for summary disposition under MCR 2.116(C)(8) and (10), and Plaintiff has requested summary disposition pursuant to MCR 2.116(I)(2).

K-Mart, Inc., then known as S.S. Kresge Company, first entered into a lease for the premises involved in this lawsuit, on November 28, 1975, when the landlord was Lakestate Development Company. The original Lakestate lease was amended on June 28, 1988, when the landlord at that time was Edward Brooks, III and Shanri Holdings Corporation. The lease was amended for a second time on May 5, 2010, when the landlord was Wilson-64, LLC. The current landlord, Apple Ventures, LLC, obtained title to the leased premises via a deed in lieu of foreclosure dated August 11, 2010. Apple Ventures, LLC, is bound by the terms of the original lease and its subsequent amendments with K-Mart of Michigan, Inc. (Henceforth, Apple Ventures, LLC, will be referred to as Apple Ventures, and K-Mart of Michigan, Inc. will be referred to as K-Mart.)

At the core of this litigation is a provision in the May 5, 2010 Second Amendment to Lease. Section 5 of the second amended lease deals with the pro-ration of Common Area Maintenance (CAM) costs starting as of January 1, 2012, and the last sentence of paragraph 5.b. states:

Tenant may self-insure for insurance requirements provided  
Tenants can provide insurance certificates that satisfy Landlord and  
Landlord's lender that equivalent coverage is being provided.

Before that amendment, the tenant reimbursed to the landlord a pro-rata share of the landlord's CAM liability insurance coverage as part of its CAM expenses. This second amendment added the property insurance cost to be included in the CAM insurance expenses allocated for reimbursement by K-Mart. As shown above, the amendment also allowed K-Mart to self-insure for its own liability and property insurance requirements in lieu of reimbursing CAM expenses for those items to the landlord.

Before January 1, 2012, the landlord was responsible for providing all insurance coverage to K-Mart's leasehold, including the common areas of the premises. K-Mart was obligated to reimburse a pro-rata share only of the public liability insurance premiums for the common areas. To verify to K-Mart that the landlord was providing insurance coverage to K-Mart under the lease, the landlord furnished certificates of insurance to K-Mart. In 2009-2010 Wilson-64, LLC, the landlord at that time, furnished to K-Mart a certificate of liability insurance known as an Acord-25, issued by VanWyke Risk & Financial Management, and underwritten by Travelers Indemnity. That certificate verified liability insurance coverage for the landlord, Wilson-64, LLC, from 7/7/2009 to 7/7/2010. In January of 2011, Apple Ventures, who since August of 2010 had succeeded Wilson-64, LLC, as the landlord, furnished to Sears Holding Corporation an Acord 25 certificate of liability insurance for liability coverage from 7/7/2010 to 7/7/2011. The certificate provided by Apple Ventures was for all practical purposes identical to the prior certificate provided by Wilson-64, LLC, except that the named insured party was Apple Ventures, and Ansur America was substituted for Travelers Indemnity as the insurance company.

The Court notes that neither of the previous landlords' certificates identified this case's K-Mart store by address or other location indicator. The Court also especially notes that those certificates show that K-Mart was merely a certificate holder, and not listed as an insured party on the landlord's insurance policies. In other words, those certificates show that the landlord was insured, but not K-Mart. This is consistent with the lease provisions that the landlord would provide all the CAM insurance for all of its business premises, and K-Mart would reimburse the landlord for its pro-rata area of that coverage.

In December of 2011, K-Mart and Apple Ventures began an exchange of emails dealing with rent, insurance, CAM payments, and change of payee of K-Mart's checks to something called Cottonwood Partners instead of Apple Ventures. K-Mart's risk manager and real estate representatives furnished to Apple Ventures a letter explaining the self-insurance program of Sears Holdings, K-Mart's parent company, and an Acord 25 liability insurance certificate and an Acord 24 property insurance certificate. Both certificates were dated 12/20/2011, and verified coverage from 6/1/2011 to 6/1/2012. The Court has not seen subsequent certificates. After early 2012, K-Mart received no objection to the certificates from Apple Ventures until April of 2013, and on May 21, 2013, Apple Ventures' representative, James Petersen, sent a letter to K-Mart declaring the lease to be in default because "the certificates indicate that the tenant is not self-insuring and are otherwise unsatisfactory to the landlord." Counsel for Apple Ventures followed on June 23, 2013, with a letter declaring the lease in default. Neither of those letters provided notice to K-Mart of the specific deficiencies in the certificates that made the certificates unsatisfactory to Apple Ventures.

The insurance certificates furnished to Apple Ventures by K-Mart differ significantly from the certificates obtained for K-Mart by Apple Ventures and Wilson-64, LLC. The insurance certificates obtained by Sears Holdings Corporation specifically identify this case's store by store number and address. The liability insurance certificate shows general liability coverage of \$5,000,000, plus \$2,000,000 in employer liability, both of which far exceed the coverage shown by Apple Ventures. The property insurance certificate discloses \$40,000,000-\$100,000,000 for various types of possible losses. When read with Sears Holdings' letter explaining the self-insurance plan, those coverages would not be invoked unless Sears Holdings' self-insurance program's

\$5,000,000 casualty retention for each liability loss were exhausted in the case of a liability claim, or the \$5,000,000 deductible per occurrence were exhausted in a property damage claim. Apple Ventures is claiming that K-Mart's insurance certificates are not satisfactory primarily because the certificates do not specifically mention liability and property damage coverage for the common areas.

It is fundamental to insurance law that the insured party must have an "insurable interest" in the entity that is being insured. The flip side of that concept is that the insurance provides coverage for the insurable interest of the insured. Therefore, in this case, it is necessary to determine what is the insurable interest of K-Mart that is being insured by its self-insurance program and its excess coverage from the insurance companies shown on the liability and property insurance certificates.

The answer to that question is that K-Mart's insurable interest is its leasehold in the premises of its store at issue in this case. What, then, is included in K-Mart's leasehold?

Paragraph 1 of the original lease of November 28, 1975, contains this language as part of the leased premises description:

Said land, completed buildings and site improvements, together with all licenses, rights, privileges and easements, appurtenant thereto shall be herein collectively referred to as the "demised premises".

More specifically, paragraph 1 of the Rider to the original lease, plainly establishes that common areas are part of K-Mart's leasehold interest.

Landlord hereby gives and grants unto Tenant, in common with others entitled thereto, including Tenant's agents, employees, customers, licensees and invitees the following licenses, rights, privileges and easements: the use of parking areas, common areas (including rest rooms and other facilities, if any), roadways, sidewalks and accessways to public streets and highways indicated

on said Exhibit "B", together with the use of any delivery or servicing areas adjoining Tenant's said buildings or designated as such on Exhibit "B".

The above provisions clearly show that the rights to and the use of the common areas are part of K-Mart's leasehold. A fortiori, the common areas are included in K-Mart's insurance covering its leasehold of the store at issue herein. For that reason, the Court does not find that the insurance certificates furnished by K-Mart necessarily need to state explicitly that the common areas are included in its insurance coverage.

That being said, the Court is concerned with the possibility that the self-insurance program and/or its excess policies could have an exclusion provision as to common areas. It would be reasonable for K-Mart to furnish a statement from the Sears Holdings Risk Manager and the excess insurance broker, Aon Risk Services Central, Inc., stating that the common areas are included and not excluded from the coverage of K-Mart's leasehold. K-Mart's defense to providing that information is that "we don't do that for anybody else."

The Court has observed the acrimony between the parties in this case, but there is no valid reason that the Risk Manager cannot provide that statement to Apple Ventures. As for the excess insurance coverage, it is only a matter of the insurance broker reviewing the excess policies and verifying that the common areas are not excluded from the coverage of K-Mart's leasehold obligations.

For those reasons, K-Mart shall provide to Apple Ventures within 90 days of the date of this Opinion statements from the Sears Holdings Risk Manager and the excess insurance broker, Aon Risk Services Central, Inc., that the common areas are included and not excluded from K-Mart's leasehold self-insurance and excess insurance coverage. New insurance certificates are not necessary because on their face the

current insurance certificates show broad coverage with no exclusion for the common areas. If K-Mart does not provide that information within the ninety-day period, K-Mart shall resume payment of pro-rata common area insurance costs effective for calendar year 2014, and annually thereafter, until those statements are forthcoming.

The Court finds Apple Ventures' deficiency complaints about K-Mart's insurance certificates to be without merit, except as noted below concerning cancellation notice. Apple Ventures' own prior insurance certificate did not meet the standards Apple Ventures now seeks to impose upon K-Mart. Apple Ventures is bound by the lease language requiring certificates of insurance, and Apple Ventures is not entitled to receive actual insurance policies or the self-insurance program plan of Sears Holdings. Even if Apple Ventures were endorsed as an additional insured party on K-Mart's policies, and Apple Ventures were listed as an additional insured party on the insurance certificates, Apple Ventures would not be entitled to copies of policies, because the second lease amendment calls for certificates of equivalent coverage, and not copies of policies or other documentation beyond the contents of the certificates. The deficiencies alleged by Apple Ventures in the insurance certificates do not constitute a sufficient breach for Apple Ventures to go directly to the nuclear remedy of lease termination and eviction, and the Court denies that relief to Apple Ventures for the following reasons.

First of all, the lease default notice letter and Counsel's notice issued by Apple Ventures to K-Mart in May and June of 2013 did not give notice to K-Mart of the specifications of the alleged deficiencies, nor why the landlord had waited over a year to legally challenge the certificates. Second, this litigation has established the existence of a misunderstanding on the part of Apple Ventures concerning the contents and meaning

of the insurance certificates in relationship to the requirements of the second lease amendment.

Under the second lease amendment, K-Mart has the option to provide certificates of liability and property insurance protection for itself. K-Mart has no duty to provide any insurance coverage of any kind to Apple Ventures, and K-Mart is not obligated to endorse Apple Ventures upon any of its insurance policies as an additional named insured third party, such as a landlord, lien-holder, creditor, etc. K-Mart is only obligated to show Apple Ventures that it has procured its own insurance to protect itself from the liability and property damage risks associated with the common areas. The second lease amendment results in Apple Ventures becoming only a certificate holder to receive K-Mart's insurance certificates, and nothing more. Just as the certificate furnished by Apple Ventures to K-Mart before January 1, 2012, showed that K-Mart was not endorsed upon Apple Ventures' insurance policies as an additional insured party, K-Mart's certificates show Apple Ventures is not included as a named insured third party in K-Mart's insurance policies. Apple Ventures may want to be endorsed upon K-Mart's policies as a named insured, but that is not required under the second lease amendment.

The certificates presented by K-Mart do, in fact, show the equivalent coverage, with higher limits, that had been provided by Apple Ventures, i.e., Apple Ventures insured itself without K-Mart being an additional endorsed third party insured, and K-Mart's certificates are the same vis-à-vis Apple Ventures. As Apple Ventures' counsel has ably argued and pointed out in Apple Ventures' pleadings, insurance certificates do not confer any rights upon Apple Ventures. If Apple Ventures wants to be actually endorsed as an insured party upon K-Mart's policies, that would have to be a subject for

negotiations. If Apple Ventures wishes to still carry common area insurance to protect itself, that is Apple Ventures' choice.

When the second lease amendment provides that the certificate must "satisfy Landlord and Landlord's lender that equivalent coverage is being provided," that does not confer upon the Landlord the right to demand certificates that go beyond the equivalent coverage disclosed by Apple Ventures' certificate. K-Mart was simply a certificate holder as to Apple Ventures, and Apple Ventures is simply a certificate holder as to K-Mart. Equivalent coverage as previously disclosed on Apple Ventures' certificate is shown on K-Mart's certificates, with even higher coverage limits.

The objections of Apple Ventures to K-Mart's certificates point up the distinction between being simply a certificate holder and being an endorsed additional third party insured upon K-Mart's policies. If Apple Ventures were actually an endorsed third party additional insured entity, Apple Ventures would be listed as such on the certificates.

Apple Ventures raised the following alleged certificates' deficiencies listed in its brief in support of its motion for summary disposition:

1. *The certificates fail to identify any common areas being insured.*

The Court has already treated this issue.

2. *The certificates failed to explain the rights of Apple Ventures as an insured, but simply referred to insurance certificates.*

Apple Ventures is not an insured, but simply a certificate holder, i.e., an entity entitled to hold a copy of the certificate to show that the named insured, Sears Holdings Corporation, has its own insurance, and perhaps for cancellation notice purposes described below. Being an insurance certificate holder does not automatically confer the status of an insured party upon

Apple Ventures. K-Mart has no obligation to provide insurance to Apple Ventures by endorsing Apple Ventures as an insured party on K-Mart's insurance policies. K-Mart is only required to show Apple Ventures that K-Mart has obtained its own insurance for its own risks under the lease, and that's what the certificates verify.

3. *Failed to assume Apple Ventures would receive notices of modifications to coverage, claims made, or if coverage was denied for any reason.*

K-Mart is required to provide to K-Mart certificates that "equivalent coverage is being provided." K-Mart has done so as to the insurance coverage itself. Apple Ventures is an uninsured certificate holder, just as Sears Holdings Corporation was an uninsured certificate holder of Apple Ventures' own previous certificate. K-Mart is not providing any insurance to Apple Ventures; K-Mart is only insuring itself and showing Apple Ventures that it has done that. If Apple Ventures is concerned about any of the potential events listed in this objection, Apple Ventures has the option to procure its own common area insurance coverage that would take effect in the event Sears Holdings' insurance would lapse or terminate.

That being said, the Acord 25 insurance certificates provided by Wilson-64, LLC, and by Apple Ventures to K-Mart stated that in the event of a policy's cancellation, "the issuing insurer will endeavor to mail 10 days written notice to the certificate holder." However, failure to do so by the issuing insurer "shall impose no obligation or liability of any kind upon the insurer, its agents or representatives." That is a fictional notice provision unless the certificate holder is endorsed upon the insurance policy to receive a cancellation notice.

By contrast, the Acord 25 insurance certificate furnished by K-Mart to Apple Ventures states that in the event of cancellation, "notice will be provided in accordance with the policy provisions." Again, unless the certificate holder is endorsed upon the policy to receive a cancellation notice, the certificate holder will not be notified of cancellation.

The reason that the cancellation notice sections of the Apple Ventures and K-Mart Acord 25 certificates are different, is that the Acord 25 certificate form was revised in 2009-2010. The version of the Acord 25 insurance certificate used by Wilson-64 and Apple Ventures was adopted in 2001 and used until 2009, as shown in the lower left-hand corner of that certificate. The new version used by Aon Risk Services on behalf of K-Mart was adopted in 2010.

Rather than go into the details behind the changes in the cancellation notice provisions of the old and new versions of the Acord 25 certificate, the Court takes judicial notice of the explanation provided on the Acord Corporation's website, and is attaching that explanation as Exhibit A to this Opinion.

In both versions of the Acord 25 certificate, the issuing insurer would not be notifying the certificate holder of policy cancellation unless the certificate holder is endorsed upon the policy as a cancellation notice recipient. The Court cannot tell if K-Mart was endorsed upon Apple Ventures' policy as a cancellation notice recipient. If K-Mart was endorsed upon Apple Ventures' liability policy as a cancellation notice recipient, and if Apple Ventures is not endorsed upon K-Mart's policy as a cancellation notice recipient, then the Court would not regard K-Mart's certificates as showing "equivalent

coverage.” Cancellation notice is an important factor, and if that endorsement was provided by Apple Ventures to K-Mart, then K-Mart should provide that endorsement to Apple Ventures. Apple Ventures shall have 60 days from the date of this Opinion to verify to K-Mart if K-Mart was endorsed as a cancellation notice recipient upon its liability insurance policy. If Apple Ventures does so, then K-Mart within the following 60 days shall endorse Apple Ventures as a cancellation notice recipient upon its policies. If Apple Ventures does not provide that verification to K-Mart, then K-Mart need not endorse Apple Ventures as a cancellation notice recipient upon K-Mart’s policies.

In addition, Apple Ventures has also raised issues involving the garden center, out-lot, and electrical expenses. With regard to Apple Ventures’ garden center/common area rental claim, the parties are governed by the historical interpretation and application of the lease terms between the landlord and tenant. If the landlord claims a right to additional rent from the garden center arrangements used by K-Mart for many years (including two garden center seasons under the current landlord’s ownership), that right was waived long ago. That previously waived right is not restored by assignment of the lease to a different landlord, or by a change in management of the landlord.

The out-lot and electricity issues are matters that are not actionable at this time, and the parties need to address those matters through negotiations and further lease amendments.

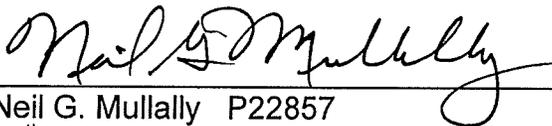
For all of the above reasons, the Court denies Apple Ventures’ motion for summary disposition, and does not dismiss K-Mart’s complaint and does not terminate

the lease between the parties. Furthermore, the Court grants partial summary disposition to K-Mart that the lease has not been breached and K-Mart's tenancy shall continue, that K-Mart has the right to self-insure for common area liability and property protection coverage that is equivalent to the coverage previously disclosed to K-Mart by Apple Ventures, that use of the common areas for operation of the seasonal garden center shall be allowed to continue in size and arrangements as in previous years, and that issues of electricity and the out-lot would require new negotiations between Apple Ventures and K-Mart.

The Court denies K-Mart's request for injunctive relief and retaliatory eviction because there are existing fact questions related to those issues, and a trial on the merits of those issues would be necessary.

An order shall be prepared and submitted in accordance with this Opinion and Michigan Court Rules.

Dated: February 12, 2014

  
Neil G. Mullally P22857  
14<sup>th</sup> Circuit Business Court Judge



# Certificates

*It's important to note that what's said in this FAQ is not intended to serve as legal advice and is only a general statement not directed to any particular set of facts.*

## FAQs

<p><b>WHAT IS A CERTIFICATE OF INSURANCE?</b></p>	<p>A certificate of insurance is a document that provides information about insurance policies. Millions of insurance certificates are issued every year, primarily in the United States. The majority of certificates are issued upon policy renewal to provide this information to third parties. These third parties are known as certificate requestors/holders. Generally speaking, certificates list one or more lines of insurance, the limits associated with those coverages, and the insurer providing coverage.</p>
<p><b>WHAT CERTIFICATES OF INSURANCE DOES ACORD PUBLISH?</b></p>	<p>ACORD publishes the following certificate of insurance forms:</p> <ul style="list-style-type: none"> <li>• ACORD 20 - Certificate of Aviation Liability Insurance</li> <li>• ACORD 21 - Certificate of Aircraft Insurance</li> <li>• ACORD 22 - Intermodal Interchange Certificate of Insurance</li> <li>• ACORD 23 - Automobile Certificate of Insurance</li> <li>• ACORD 24 - Certificate of Property Insurance</li> <li>• ACORD 25 - Certificate of Liability Insurance</li> <li>• ACORD 27 - Evidence of Property Insurance</li> <li>• ACORD 28 - Evidence of Commercial Property Insurance</li> </ul>
<p><b>WHY DO BROKERS AND AGENTS ISSUE CERTIFICATES OF INSURANCE?</b></p>	<p>Policyholders may request a certificate of insurance for many reasons. Some of the more common are:</p> <ul style="list-style-type: none"> <li>• They are a tenant, and a building owner is requesting information about the existence of liability insurance coverage</li> <li>• They are the mortgagor of a building, and are requesting information about the existence of property insurance coverage upon closing or renewal</li> <li>• They leased equipment and the owner of equipment wants information about the existence of property insurance coverage while equipment is in possession of the client</li> <li>• They need evidence of workers compensation insurance in order to obtain a contract.</li> </ul>
<p><b>WHAT'S THE DIFFERENCE BETWEEN A CERTIFICATE AND A POLICY?</b></p>	<p>A Certificate of Insurance is NOT an insurance policy, and does not serve to provide, endorse, amend, extend or alter in any way the terms of an insurance policy. Only an endorsement, rider or amendment to the policy can effect changes in coverage. Reference to a contract between the client and a third party on a certificate does not provide coverage.</p>
<p><b>WHY ARE THERE SEPARATE CERTIFICATES FOR PROPERTY INSURANCE AND LIABILITY INSURANCE?</b></p>	<p>Typically, a property insurance policy obligates the insurer to notify the mortgage holder in the event of policy cancellation. A typical liability insurance policy obligates an insurer to notify only the first named insured and no one else of policy cancellation, unless the policy is endorsed to provide notice to another party. For this reason, ACORD working groups recommended publishing separate certificates.</p>
<p><b>I'M AN INSURANCE PRODUCER, AND A CLIENT HAS ASKED ME TO USE AN OLDER VERSION OF AN ACORD CERTIFICATE-WHAT SHOULD I DO?</b></p>	<p>As is true for all ACORD forms, we monitor and revise our forms as regulatory requirements change, and, where necessary, file them with state insurance departments as required. Any earlier editions of our forms that have been withdrawn from the forms library are not kept up-to-date as to regulatory requirements, and therefore should not be distributed for use. You should tell your client that a non-current version of an ACORD form may not be compliant with insurance regulations and that its use would be risky. It is imperative that all ACORD forms users use the most current versions of our forms. You can determine which of ACORD's forms are current by referring to our website (<a href="http://www.acord.org">www.acord.org</a>).</p>
<p><b>MY AGENCY MANAGEMENT SYSTEM STILL PROVIDES AN OLDER CERTIFICATE, AND A CLIENT HAS ASKED ME TO ISSUE ONE. WHAT SHOULD I DO?</b></p>	<p>You should ask your agency management system vendor if a software update containing current ACORD forms is available and how you can obtain that update. Vendors have certain software-updating obligations in response to forms revisions.</p> <p>To use ACORD forms you have to be licensed by ACORD. Generally speaking, under ACORD's present licensing regime, agents and brokers can be licensed in two ways. One way is to buy ACORD forms-producing software from an ACORD-licensed vendor. In that case, the purchaser becomes authorized to use ACORD forms via that software. If an agent or broker wants to use an ACORD form other than through an ACORD-licensed vendor, it is easy to become licensed through ACORD's Advantage program. (The program is detailed at <a href="http://www.acord.org/standards/forms/advantage/Pages/default.aspx">http://www.acord.org/standards/forms/advantage/Pages/default.aspx</a>).</p> <p>Regardless of where users lawfully obtain ACORD forms, it is strongly suggested that they regularly go to ACORD's website (<a href="http://www.acord.org">www.acord.org</a>) to obtain information on the currency of the forms being utilized and, if necessary, follow the instructions to download the current versions.</p> <p>Once a form is outdated, ACORD no longer checks on whether it remains regulatorily compliant. Thus, anyone using an outdated form does so at great risk.</p> <p>You should consult with your legal adviser on how ACORD's licensing requirements apply to your situation and how you may be affected in the future by any changes ACORD may make to its present licensing structure.</p>

**WHY DID THE CERTIFICATE CHANGES HAPPEN IN LATE 2009/EARLY 2010?**

Some of the changes involved formatting enhancements proposed by an ACORD working group, and voted on by our membership. Other changes were made as a result of changes in state insurance department regulatory requirements. As ACORD often does for the sake of efficiency in our forms production process, in order to minimize the number of times we revise any specific form, we combined these two sets of changes and updated the certificates to reflect all necessary revisions.

The updates associated with the regulatory requirements involved two areas on these forms:

- The disclaimer text found near the top of the certificates (immediately below the form title)
- The cancellation text found near the bottom of the certificates

This document focuses on the cancellation text revisions. For reference, here is a comparison of the old text and the new text:

Old Text	New Text
SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL ____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ACORD's Certificates Forms Working Group had been in the process of reviewing various certificates for possible enhancements. During the summer of 2009, working group participants made the following recommendations concerning the old cancellation text:

- The fill-in field for a number of days should be removed. The amount of advance notice required under an insurance policy may vary based upon a carrier's own practices. Some insurance policies include cancellation provisions with allowances for more than one count of days, dependent on the reason for cancellation. For example, many policies may be cancelled with 10 days notice for non-payment, and 30 days notice for other reasons. Therefore, one fill-in field on the certificates for the number of days is inadequate. The precise advance notice at cancellation may vary based on policy language as well as regulatory requirements.
- The word "endeavor" should be removed. Policy cancellation provisions generally don't use the phrase "endeavor to". Only a policy can obligate an insurer to provide notice of cancellation. Unless a policy's provisions explicitly provide for notice to a party also listed as the certificate holder on the certificate of insurance, the insurer is not obliged to notify that party.

At about the same time the Certificates Working Group was considering the cancellation text, the South Dakota Insurance Department issued several Certificates of Insurance Bulletins (2009). As a result, ACORD had to make specific changes to its Certificate Disclaimer Statement(s) (which state in part "This certificate is issue as a matter of information only...") and to its Cancellation Provision(s). ACORD presented the draft cancellation text developed by the working group to the South Dakota regulators and confirmed that the text satisfied its regulatory requirements.

Certificates of insurance may be viewed as a summarized reflection of an insurance policy and are only informational. The policy is the definitive source for its provisions, not the certificate. If any party in addition to the first named insured desires a copy of a cancellation notice in the event the policy is cancelled, that party should be expressly endorsed onto the policy as a cancellation notice recipient.

Each Certificate of Insurance/Evidence form includes, following the "Coverages" section, a field for "Description of Operations" and/or "Remarks", and that section, or an ACORD 101 Additional Remarks Form, may be used to include more information about the policy, e.g. Number of Days of Written Notice.

**WHAT IS THE STATUS OF CERTIFICATE UPDATES?**

ACORD published new releases of all of its certificate forms in late 2009/early 2010. New versions of the ACORD 24 and ACORD 25 were published in October 2009 and the others were published January 2010. ACORD plans to release new editions of the ACORD 23 & 25 later in 2010 to address non-regulatory formatting changes approved by membership vote in November, 2009. The next release of the ACORD 23 will be expanded in scope to include leased equipment.

**WHY ARE THE ACORD 27 & 28 TITLED "EVIDENCE" FORMS?**

The ACORD 27 and 28 forms are certificates of insurance designed for delivery to parties that have a financial interest in the property covered by the policy listed on each. These parties are typically lending institutions and the lending community prefers the title "Evidence of..." as contrasted with "Certificate of...". Regardless of the "Evidence" reference in the title, these forms are certificates of insurance, and as stated in the forms, and as required by regulation, are issued as a matter of information only.

**WHAT IS THE CURRENT AND FUTURE STATUS OF THE ACORD 27 AND 28?**

ACORD's Certificates Working Group identified consideration of potential revisions to the ACORD 27 and 28 forms as a priority in 2008. Throughout 2008 and 2009, much time and effort was spent attempting to resolve differences of opinions concerning these forms, as well as related formatting enhancements. Active participants in the group represented lenders, producers, and insurers. In brief, despite extensive efforts, the participants were unable to come to consensus. The current forms reflect the result of required regulatory changes, and formatting changes developed by ACORD members in an ACORD working group, and voted on in our regular maintenance request process.