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Cray Huber Horstman Heil & VanAusdal LLC

On May 23, 2017 the Cray Huber appellate department won an important choice-of-law issue in the First District Appellate Court. Under the Illinois Supreme Court's opinion in *Bridgeview Health Care Center, Ltd. v. State Farm Fire & Casualty Company*, 2014 IL 116389, Illinois courts cannot undertake a choice of law analysis unless they first determine that an "actual conflict" exists between the laws of two of more states. After *Bridgeview*, courts have struggled with defining when an "actual conflict" exists. This is important, because if no "actual conflict" exists, Illinois courts are not authorized to undertake a choice-of-law analysis, which means that the law of the forum state *automatically* applies by default.

This case presented the question of whether an "actual conflict" exists when one state has a statute on a topic but another state does not have such a statute. In this case Illinois had a statute that required 30 days prior notice of exclusions that are added at the time of renewal of an insurance policy, but Indiana had no such statute. Cray Huber's client (Cincinnati Insurance Company) argued that this created an "actual conflict" requiring the court to undertake a choice-of-law analysis. Cray Huber's opponent argued that there can never be an "actual conflict" when a state has no law on a topic, because the absence of law in a state means there is *no* law in that state, not that there is *conflicting* law. The Appellate Court adopted Cray Huber's side of the argument, holding that an "actual conflict" existed between the law of Illinois (which had a statute requiring prior notice) and Indiana law (which had no prior notice statute).

The Appellate Court ordered the lower court to undertake a choice-of-law analysis rather than automatically applying Illinois law by default. On remand, Cincinnati Insurance Company will seek a ruling that Indiana law applies, which will allow it to enforce a coverage exclusion that was added to its renewal policy without 30 days prior notice of the change.