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Potential Conflicts of Law Require Illinois Courts to Conduct a Choice-of-Law Analysis

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In an opinion issued Wednesday, an Illinois Appellate Court held that a conflict of law can arise even if the courts of one state have never addressed the issue in dispute. *Bridgeview Health Care Ctr., Ltd. v. State Farm Fire & Cas. Co.*, 2013 IL App (1st) 121920 (June 19, 2013) ("*Bridgeview*"). Under Illinois law, courts do not conduct a choice-of-law analysis unless it is shown that a conflict exists between the laws of the potentially applicable jurisdictions. If a competing jurisdiction has never addressed the determinative issue, Illinois courts have previously held that no conflict exists and, thus, would apply Illinois law to the dispute. In *Bridgeview*, however, the First District Appellate Court rejected that approach.

Bridgeview involved the issue of whether an insurer, State Farm, had a duty to defend its insured for claims alleging violations of the Telephone Consumer Protection Act (TCPA). State Farm had a duty to defend if Illinois law applied, but it was unclear whether State Farm had a duty to defend if Indiana law applied because no Indiana *state* court had addressed the issue. Following a prior Illinois Appellate Court decision, the trial court held that there could be no conflict between the laws of Illinois and Indiana because of the lack of authority from Indiana state courts. In reaching that holding, the trial court disregarded the federal decisions predicting that Indiana courts would not provide coverage for TCPA violations. The court found no conflict of law and applied Illinois law without engaging in Illinois' "significant contacts" choice-of-law inquiry. As a result, the trial court concluded that State Farm had a duty to defend.

On appeal, the First District Appellate Court reversed and remanded, instructing the trial court to conduct the "significant contacts" analysis because of the potential conflict of law between Illinois and Indiana. The Appellate Court further instructed the trial court to "use decisions from the federal courts and the courts of other states, as well as law reviews, treatises, and other sources, in an attempt to predict how the Indiana courts would decide the determinative issues here." The Appellate Court explained that "the potential for conflict between Indiana law and Illinois law requires the trial court to engage in a choice-of-law analysis."

Bridgeview represents a potentially significant shift in Illinois choice-of-law analysis, which may have a widespread impact in all types of civil litigation disputes. Previously, if there was only Illinois law on a particular issue and no clear law in another jurisdiction, a litigant could have comfort that an Illinois court would apply Illinois law without making a choice-of-law determination. Now, however, courts following *Bridgeview* are required to analyze the contacts and make a choice-of-law determination if there is any argument that the law of the competing jurisdiction is different – an argument that now can be made even if the competing jurisdiction has no law on an issue.

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