

**Summary of SC92026, *Emerson Electric Co. v. Marsh & McLennan Co.***

Appeal from the St. Louis city circuit court, Judge Robert H. Dierker  
Argued and submitted Nov. 30, 2011; opinion issued Mar. 6, 2012

**Attorneys:** Emerson was represented by Mark G. Arnold of Husch Blackwell LLP in St. Louis, (314) 480-1500; Dorothy White-Coleman and Susie McFarland of White Coleman & Associates LLC in St. Louis, (314) 621-7676; John C. Cabaniss of Cabaniss Law in Milwaukee, (414) 220-9211; and Randall D. Crocker and Thomas Armstrong of von Briesen & Roper SC in Milwaukee, (414) 276-1122. Marsh was represented by Christopher J. St. Jeanos of Willkie Farr & Gallagher LLP in New York, (212) 728-8730; and Kevin F. Hormuth and David P. Niemeier of Greensfelder Hemker & Gale PC in St. Louis, (314) 241-9090.

*This summary is not part of the opinion of the Court. It has been prepared by the communications counsel for the convenience of the reader. It neither has been reviewed nor approved by the Supreme Court and should not be quoted or cited.*

**Overview:** A utility company appeals the trial court's holding that its insurance broker was entitled to judgment without trial finding, as a matter of law, that the broker did not violate its fiduciary duty or any duty of loyalty to the utility when the broker received undisclosed extra commissions from insurers to which it referred the utility's business, and when the broker deposited the utility's premium payments in interest-bearing accounts while it waited to send the premiums to particular insurers. In a 7-0 decision written by Judge Laura Denvir Stith, the Supreme Court of Missouri reverses the judgment and remands (sends back) the case. The broker does owe its insureds a fiduciary duty, which includes a duty of loyalty. The trial court is correct that receiving contingent commissions and interest on premiums did not themselves violate those duties, nor do those duties require the broker always to obtain the lowest possible price. But the broker had a duty to act with reasonable care in procuring insurance for the utility and should have been able to investigate whether it did so. It also had a 20-year broker relationship with the utility and may have enlarged its duties to the utility through contract or through their course of dealing. The trial court erred in granting the broker judgment before the utility was permitted to present facts on these issues, and the case is remanded so the utility can investigate and present facts on these issues.

Judge Charles E. Atwell, presiding judge of the 16th Judicial Circuit (Jackson County), sat in this case by special designation in place of Judge George W. Draper III.

**Facts:** Marsh & McLennan Co. has served as Emerson Electric Co.'s insurance broker for more than 20 years, helping Emerson procure excess liability, aircraft, international and other specialized insurance. The record does not reveal whether Emerson and Marsh operated under a written agreement, an oral agreement or a combination of both. But it does reveal that, during the course of their relationship, Marsh accepted contingent commissions from certain insurers based on the amount of business it placed with those insurers. The record also shows that Emerson paid its insurance premiums directly to Marsh, which placed the premiums in interest bearing accounts before forwarding them to the proper insurer. Emerson asserts that, as its insurance broker, Marsh was its agent and owed Emerson fiduciary duties of loyalty and due care. Emerson claims that Marsh breached its duty of loyalty by steering Emerson's business to certain insurers

to maximize the commissions Marsh earned and by not disclosing its receipt of interest on the premiums it collected from Emerson prior to forwarding them to insurers. Emerson also claims that the receipt of the contingent commissions violated its duty of care because it prevented Marsh from obtaining insurance at the lowest possible price and that, even if insurance brokers have no general duty to obtain the best price, Marsh agreed to do so for Emerson. The trial court granted Marsh judgment on the pleadings, and Emerson appeals.

## **REVERSED AND REMANDED.**

**Court en banc holds:** (1) Insurance brokers are agents of the insured when acting on behalf of the insured, and all agents owe fiduciary duties of loyalty and due care when acting in the scope of the agency relationship. Marsh, therefore, owed Emerson fiduciary duties of loyalty and due care when acting as Emerson's agent. Nevertheless, unless otherwise agreed, brokers only have a duty to procure the requested insurance and have no duty to advise insureds about the proper types and amounts of insurance or to obtain insurance at the lowest possible price. As a result, absent an agreement to the contrary, Marsh did not violate the fiduciary duties of loyalty or care by failing to obtain insurance at the lowest possible price.

(2) Although under the common law a broker acts as the agent of the insured when procuring insurance, it usually acts on behalf of the insurer when collecting premiums from the insured. Missouri statute supports this interpretation by recognizing that brokers may act on behalf of insurers at certain times and insureds at others and by allowing brokers to keep premiums from multiple insureds in the same account. As a result, Marsh did not owe a fiduciary duty to Emerson to tell it about interest it might collect once it had collected premiums and prior to forwarding them to the relevant insurer.

(3) Missouri statute expressly authorizes brokers to receive commissions without limiting that authority to a particular type of commission; therefore, Marsh did not breach its fiduciary duties to Emerson by receiving contingent commissions. Furthermore, because commissions are authorized expressly, Marsh had no duty to disclose its receipt of contingent commissions, just as it had no duty to disclose any other statutorily authorized aspects of its financial arrangements.

(4) Although Marsh had no general duty to obtain the lowest cost insurance or to disclose its receipt of contingent commissions or the interest it collected on Emerson's premiums, it did have a duty to use reasonable care in procuring insurance, and the record was inadequate for the trial court to grant judgment against it on the claim that the desire to obtain contingent commissions caused Marsh not to use due care. Furthermore, Marsh may have assumed additional duties through either contract or its course of dealing with Emerson, but because the case was decided on the pleadings, Emerson had no opportunity to develop evidence on this issue. It was error, therefore, to hold that Marsh was entitled to judgment as a matter of law.