

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-2010

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THE VARIABLE ANNUITY LIFE INSURANCE  
CO.,

Plaintiff-Appellant,

versus

ROBERT L. CLARK, Comptroller of the  
Currency, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Southern District of Texas

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(March 21, 1995)

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ON REMAND FROM THE UNITED STATES SUPREME COURT

Before GOLDBERG,\* JOLLY, and WIENER, Circuit Judges.

E. GRADY JOLLY, Circuit Judge:

On August 26, 1993, in the above-captioned case,<sup>1</sup> we held that the section of the National Bank Act permitting national banks in towns with under 5,000 inhabitants to act as insurance agents, impliedly prohibited national banks in towns with populations over 5,000 inhabitants from selling insurance. We further held that

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\*Due to his death on February 11, 1995, Judge Goldberg did not participate in this decision. The case is being decided by a quorum. 28 U.S.C. § 46(d).

<sup>1</sup>1998 F.2d 1295 (5th Cir. 1993).

"annuities" were "insurance" within the meaning of this provision. Accordingly, we reversed the decision of the district court affirming the Comptroller of the Currency's decision approving the proposed annuity sale by a national bank located in a town with a population greater than 5,000. Certiorari was granted and the Supreme Court<sup>2</sup> reversed our decision. The Court held that the Comptroller's opinion and order that annuities were properly classified as investments, not insurance, and that the sale of annuities was an incidental power necessary to carry on the business of banking was a reasonable construction of the National Bank Act and thus entitled to deference. By so holding, the Court found it unnecessary to decide--as we had decided--whether a national bank located in a town with more than 5,000 residents was prohibited from selling insurance. In accordance with the decision of the Supreme Court, we VACATE our mandate and REMAND to the district court for entry of judgment in favor of the Comptroller of the Currency and Nationsbank of North Carolina.

VACATED and REMANDED.

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<sup>2</sup>Nationsbank v. Variable Annuity Life Ins. Co., \_\_\_ U.S. \_\_\_, 115 S.Ct. 810, 130 L.Ed.2d 740 (1995).