

Case Review #1

Nations Bank of North Carolina, N.A. V. Variable Annuity Life Insurance Company

San Caraballo

LAW 529 / Legal Environment of Business

Galen Bland, J.D.

**July 25, 2005**

### **Case Name, Citation and Court**

Nations Bank of North Carolina, N.A. V. Variable Annuity Life Insurance Company, 115 Supreme Court 810 (1995)

### **Summary of Key Facts**

Nations Bank sought permission from the Comptroller of the Currency to sell annuities. When this permission was granted as “incidental to the business of banking,” Variable Annuity Life Insurance Co. (VALIC) filed a law suit challenging the Comptroller’s decision. The District Court upheld the Comptroller’s ruling, but the Fifth Circuit Court of Appeals reversed it. Nations bank petitioned the Supreme Court for review and certiorari was granted.

### **Legal Issues**

1 – Should a bank, an institution commonly known for deposit savings and check cashing, be allowed to sell annuities to the public?

2 – Should annuities be considered a form of investment as presented by Nations Bank in this case?

### **Holding**

Yes, much like a typical savings account, Roth IRA, CD or any other form of long and/or short term investment service, banks are authorized to carry on the business of banking. As long as a transaction between the bank and the customer has occurred in which the customer willingly buys, sells, exchange, borrow money or personal security from the banking institution.

Yes, as described above, much like any other form investment, an annuity offers the customer an investment option. It offers the opportunity to set aside money for

retirement or future expenses. An annuity also offers fixed or variable re-payments depending on the investment performance.

### **Reasoning**

A bank is defined as a business establishment in which money is kept for saving or commercial purposes or is invested, supplied for loans, or exchanged. As established by the Comptroller and confirmed by the Supreme Court, when a customer surrenders money to a bank with the intent to set it aside, it gives the bank the right to “carry on the business of banking”. Thus, whether the bank offers a conventional savings account, mutual fund, sells or buy exchange, or offers annuities as an investment option – it is ultimately offering nothing else but an opportunity for savings and gains on such.

An issue arises as to whether an annuity can be considered an investment or not. An annuity is though a stream of equal payments to an individual, such as to a retiree, that occur at predetermined intervals (that is, monthly or annually). The payments may continue for a fixed period or for a contingent period, such as for the recipient's lifetime.

**Although annuities are most often associated with insurance companies and retirement programs, the payment of interest to a bondholder is also an example of an annuity.**

## **Questions**

### **1 – What did Nations Bank want to do that required permission from the Comptroller of the Currency?**

Nations Bank wanted to sell / offer annuities to their customers.

### **2 – What was the basis of VALIC's objection to the Comptroller's grant of permission to Nations Bank?**

To my understanding, VALIC's objection to the Comptroller's decision was that an annuity should not be considered an investment, thus its sale shall not be offered by a banking institution.

### **3 – How did the District Court and appellate court rule in this case?**

The District Court ruled in accordance to the Comptroller's decision to grant Nations Bank the permission to sell annuities. The Fifth Court of Appeals, however, reversed that initial ruling.

### **4 – What is the reasoning behind the Supreme Court deferring to the Comptroller's ruling?**

The Supreme Court agreed with the Comptroller's view of an annuity and the defined business of banking. In other words, the Supreme Court view the sale of annuities from a banking institution as part of the "incidental power...necessary to carry on the business of banking", as banks offer annuities as a form of financial investment like any other investment option.