

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1662

PACIFIC MUTUAL LIFE INSURANCE COMPANY,

Plaintiff-Appellant,

versus

FIRST REPUBLICBANK CORPORATION, ET AL.,

Defendants-Appellees.

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

ON REMAND FROM THE SUPREME COURT OF THE UNITED STATES

(May 26, 1995)

Before POLITZ, Chief Judge, REAVLEY and BARKSDALE, Circuit
Judges.

PER CURIAM:

We reversed the judgment of the district court with opinion
at 997 F.2d 39 (5th Cir. 1993), and the Supreme Court affirmed by
an equally divided vote. Our mandate has not been issued to the
district court. The Supreme Court has now held § 27A(b) to be an
unconstitutional breach of separation of powers. Plaut v.
Spendthrift Farm, Inc., 115 S.Ct. 1447 (1995). Under that
decision the claims of plaintiff are barred, and the district
court would be unable to do more than repeat its prior judgment.
Therefore, our opinion and judgment are vacated, and the judgment
of the district court is affirmed.

AFFIRMED.