

# Gupta / Beck

Issues & Appeals

September 20, 2012

Patricia S. Connor, Clerk  
U.S. Court of Appeals for the Fourth Circuit  
1100 East Main Street, Suite 501  
Richmond, Virginia 23219

Re: No. 11-1564, *Soutter v. Equifax* – Post-Argument Citations Under Rule 28(j)  
(Argued on September 19 before Judges Gregory, Shedd, and Agee)

Dear Ms. Connor:

Concerning Judge Shedd's questions about the propriety of certification based on Equifax's classwide failure to follow reasonable procedures, we cite these cases:

- *Young v. Nationwide Insurance*, --- F.3d ---, 2012 WL 3828036, at \*10 (6th Cir. Sept. 5, 2012) (“Plaintiffs proceed on the theory that [certain] verification processes ... would catch most types of errors and that Defendants caused each class members’ injury simply by failing to use such processes. Plaintiffs will have to prove their theory at trial; but for class certification, this is a predominate issue central to each of Plaintiffs’ claims and subject to generalized proof.”).
- *Gray v. Hearst Communications*, 444 Fed. App’x 698, 701 (4th Cir. 2011) (“Having conceded the existence of a uniform distribution obligation, [the] remaining objections to class certification carry little weight.” The alleged failure to follow this uniform obligation “distinguishes *Wal-Mart*.”).

Unlike in *Wal-Mart*, our “claim requires no proof of individual discriminatory intent.” *Ross v. RBS*, 667 F.3d 900, 909 (7th Cir. 2012). Rather, the question on the merits will be whether Equifax failed to follow reasonable procedures.

As to the panel's questions about Equifax's procedures, we direct the Court's attention to the following record citations:

- Equifax never claimed any relevant variations in *its own* procedures. JA389.
- The district court found that alleged variations of the courts or Lexis-Nexis made no difference to Equifax's liability. JA710-11. Court officials testified

# Gupta / Beck

*Issues & Appeals*

that “the same basic information was provided” statewide (JA269, 377) and Equifax offered “no evidence” to the contrary. JA698. Equifax’s argument about Lexis-Nexis’s variations was found both legally irrelevant and factually unsupported. JA711.

- Throughout the class period, accurate judgment disposition data was readily available from the courts but was not obtained by Equifax. JA269, 287-88, 379; *see also* JA710 (finding plaintiffs made a “credible showing” that Equifax failed to capture basic disposition information). Plaintiffs also presented evidence of pervasive inaccuracies in Equifax’s data throughout the class period. JA551-52.

Finally, as to Judge Agee’s question, these documents show that Ms. Soutter’s judgment was vacated:

- JA425 (handwritten notation: “J Vacated Case Dism”).
- JA430 (“judgment ... set aside and dismissed”); *see also* JA275 at 20.

Sincerely,

*/s/ Deepak Gupta*

---

Deepak Gupta  
*Counsel for Appellees*

cc: Paul Clement