tion. According to Pendergrass, Rite Aid was liable for each "republication" of its initial report, including the July 2007 viewing by Target, and any other republications occurring within the statutory limitations period.

The court presumed that the discovery rule delayed the beginning of the limitations period to November 30, 2006, when the plaintiff alleged he first learned of the defamatory report. Second, it declined to apply the "single publication" rule (that any one edition, broadcast, or similar aggregate communication was a single publication) in this case, "given the vast differences between traditional 'mass publication' for a general audience and confidential publication to a consumer reporting agency." Rite Aid did not circulate the report to a wide audience; instead, it transmitted it to ChoicePoint with the knowledge that it would be made available to subscribing customers upon request, and viewed on separate, distinct occasions. Therefore, there was no "aggregate publication." Accordingly, the motion was dismissed in respect of any republication of the report that occurred on or after January 2007, but granted for any republication occurring prior to that date, being time-barred. *Pendergrass v. ChoicePoint, Inc.*, No. 08-188, 2008 WL 5188782 (E.D. Pa. Dec. 10, 2008).

Employment Discrimination—Evidence

Stover, an African-American woman, was employed by the defendant school district as a secretary and administrative assistant. A few years prior to Stover's resignation in 2006, the District created and filled an unadvertised position for a "Central Office Administrative Coordinator." This position was filled by a O., a white man. His starting salary was significantly higher than what Stover was being paid, and he had a master's degree, while Stover had a bachelor's degree. When Stover learned of the new hire's salary, she argued that like O., she was an administrative assistant and performed substantially equal work, and, therefore, should be paid the same. She filed a charge with the Equal Employment Opportunity Commission (EEOC), alleging that the District had discriminated against her on the basis of race, and violated the Equal Pay Act (EPA). A year later, Stover filed a complaint in federal court, alleging race discrimination and a violation of the EPA, and adding claims for gender discrimination and retaliation. At trial, the district court precluded certain evidence, including evidence of the District's practice of not advertising employment openings. The district court ultimately permitted the case to go to a jury, and the jury returned a special verdict in favor of the District on all claims. The District also moved for, and was granted, an award of attorney's fees and costs. Stover appealed, claiming that the district court made several errors, including: not permitting alleged admissions of discrimination and discriminatory intent to be considered as direct evidence; permitting evidence of the new hire's qualifications; allowing evidence that attacked Stover's character; excluding evidence of the District's hiring practices; and dismissing the constructive discharge claim.

The U.S. Court of Appeals for the Fifth Circuit affirmed in part, reversed and vacated in part, and remanded. Dealing first with the district court's grant of summary judgment in favor of the District on the constructive discharge claim, the court applied the requirement that the employee must "offer evidence that the employer made the employee's working conditions so intolerable that a reasonable employee would be compelled to resign." Stover presented no evidence of a demotion, a reduction in salary or job responsibilities, reassignment to menial work, badgering or harassment, or offers of early retirement. "[A]t best, the evidence shows that Stover was disgruntled ... [but] none of the evidence increases the severity of pervasiveness of any harassment to the level required to support a constructive discharge claim." On Stover's challenges to various evidentiary rulings in the court below, the appellate court held that the district court properly admitted evidence comparing the skill, effort, and responsibilities required of the jobs performed by Stover and O. There was sufficient evidence presented at trial for the jury to conclude that the District did not discriminate against Stover on the basis of race or sex, so that her claim (that evidence that the District admitted discriminatory conduct and violations of the EPA should have been considered as direct evidence of discrimination) was not justified. Stover also claimed that the court below had erroneously permitted evidence that Stover had destroyed or deleted computer information. The appellate court found that this was not an abuse of discretion, as "the district court stated that Stover had portrayed herself to be a victim and work attitude was at issue. The court permitted the evidence for purposes of impeachment." Likewise, on the remaining argument—that the district court improperly precluded evidence of discriminatory hiring practices by the District—the Fifth Circuit found no error had occurred. The "lack of a policy requiring advertisement under these circumstances is not evidence of discrimination." *Stover v. Hattiesburg Pub. Sch. Dist.*, 549 F. 3d 985 (5th Cir. 2008).

Public Records

Production of Deleted E-mails

In the course of a public debate on whether to renovate a government building (a courthouse) or to demolish it, the Seneca County Board of Commissioners approved an architectural study of the County government's future space requirements. The resulting report identified five options. The report was circulated by e-mail to the Board members by Commissioner Nutter prior to August 2006, when the Board approved a variation of one of the options that included demolition. Nutter had received no e-mail responses from the other commissioners, and no one had raised the issue during any meeting prior to a Board resolution in an open meeting. Claiming there had been no public deliberations on the approved option, the applicant company sought to review all outgoing and incoming e-mails, including "all sent messages, received messages, deleted messages, and drafts of messages" of specified County Commissioners, including Nutter, up to August 2007. The records produced contain-

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