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And The Defense Wins

[Lisa Mann](#) and [Alex Walker](#) of **Modrall, Sperling, Roehl, Harris & Sisk, PA** in Albuquerque, New Mexico recently obtained a defense verdict after a five-day jury trial on a Title VII retaliation claim. The plaintiff claimed that her employer retaliated against her by threatening to ruin her marriage, challenging her claim for unemployment benefits, spreading rumors about her, and lying to the unemployment bureau and the Equal Employment Opportunity Commission. She sought unspecified emotional distress damages.

The plaintiff, along with three other former female employees, previously went to trial in 2005 on a variety of civil rights claims stemming from their employment (e.g., sexual harassment, hostile work environment, sex discrimination, intentional infliction of emotional distress, etc.). Those claims were tried to a jury, which trial resulted in a defense verdict. The defendant had previously been granted judgment as a matter of law on the plaintiff's retaliation claim, which was not, therefore, sent to the jury. The plaintiffs appealed the final verdict stemming from the 2005 trial. While the appeal was pending before the Tenth Circuit, the U.S. Supreme Court decided *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53 (2006). White effectively changed the standard in the 10th Circuit in retaliation cases from an "adverse employment action" to a "materially adverse action." The 10th Circuit upheld the jury verdict and the dismissal of all other claims, save for the plaintiff's retaliation claim, which was remanded for trial to a jury.

At trial, the defense showed that, for the most part, the "materially adverse actions" were taken before the defendant had any knowledge of the plaintiff's alleged protected activity, and therefore could not have been motivated by a desire to retaliate. As for the plaintiff's claims that the defendant lied in its submissions to the New Mexico Department of Labor and the EEOC, the defense offered evidence that its statements were true. The defense also offered evidence that the plaintiff's claimed emotional distress was suspect. The jury deliberated approximately two hours before returning a defense verdict.

