

## And The Defense Wins

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On September 23, 2017, DRI members [Tyler J. Oldenburg](#) and [Meagan L. Logan](#) of the Jacksonville, Florida, law firm **Marks Gray PA**, obtained a defense verdict in *America's CNG, LLC v. City of Lake City*, which was an anticipatory breach of contract case concerning the sale of compressed natural gas. The case was tried in Columbia County, Florida.

Plaintiff, through its attorneys Keith Mitnik, Benjamin Webster, and Cory Simmons, of the Morgan & Morgan Business Trial Group, claimed that the City refused to perform its obligations under a fully executed agreement, which required the City to sell natural gas to the Plaintiff over a ten year period of time. Plaintiff further claimed that, as a result of the City's refusal to sell it natural gas, its business was completely destroyed or, in the alternative, had lost profits over the life of the contract. The City argued that there was no enforceable agreement as to all material terms as there was a separate non-compete agreement that the parties had agreed to execute that was ultimately never signed as the parties could not agree on the specific terms of the non-compete agreement. The defense also offered expert testimony demonstrating that, even if there was an agreement, the plaintiff was not financially capable of getting its operation started and, even if the plaintiff could get its operation started, plaintiff's novel business concept would not have been profitable.

At the close of the nine day trial, which was interrupted due to Hurricane Irma, the plaintiff requested \$12,533,575.00, for lost profits it claimed it sustained over the ten year term of the contract or, in the alternative, \$7,974,000.00 for damages due to the destruction of its business. After about three and a half hours of deliberations, the jury of five women and one man returned a verdict in favor of the City, finding that although there was an agreement between the parties, plaintiff was equitably estopped from enforcing the contract due to its conduct.

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