

TRIAL TOUGH. SOLUTION SAVVY.™



## CASE STUDY

# How Lightfoot **RECOVERED FUNDS** After An Energy Savings Contract Failed to Deliver

## How potential energy savings led to costly consequences

Local governments across the United States face an intractable problem: replacing aging infrastructure in an era of skyrocketing construction costs driven by inflation. To finance this urgent work, many are increasingly turning to so-called energy performance savings contracts (EPSCs). These agreements allow governments to upgrade utilities, HVAC systems and other equipment without upfront payments. Instead, the projects are funded by projected energy cost savings over a span of years, even decades, resulting from the upgrades.

When EPSCs deliver as promised, it's a win-win for local governments. Problems arise, however, when contractors paint a rosier picture of potential cost savings, leaving towns or counties with millions of dollars in unexpected losses when those savings fail to materialize.

That is exactly what happened to a large city in the Southeastern U.S. The municipal government entered into an EPSC with an international contractor that promised \$102 million in guaranteed savings from improvements across 119 facilities. That did not happen – actually, savings fell far short of contractual guarantees. Instead, implementation issues plagued the project, and the city estimated that shortfalls and damages would cost it in excess of \$25 million.

Recognizing [Lightfoot's experience in this area](#), the city engaged our [Corporate Plaintiff's Litigation group](#) to pursue restitution from the contractor. Led by partner [Ashby Pate](#), the team included partners [Brian Boyle](#) and [Johnny Johnson](#) and senior counsel [Liz Huntley](#).





# DEEP EXPERIENCE

## Our Approach



**R. Ashby Pate**  
Partner



**Brian C. Boyle**  
Partner



**John M. Johnson**  
Partner



**Elizabeth H. Huntley**  
Senior Counsel

Drawing on extensive EPSC litigation experience, the Lightfoot team knew that any case the city filed would hinge on the contract. Our lawyers began by thoroughly auditing the contract, comparing its promises to the actual deliverables and cost savings. Since ESPCs are far from standard commercial contracts, the review process demands deep experience with how they are designed to operate – and where they can fall short. Ultimately, the Lightfoot team found many areas of concern that would be causes of action in litigation.

Even though it was going up against a Goliath, the city decided to sue the contractor and pursue restitution for its taxpayers. This complex undertaking required more than 35 depositions and an exhaustive [discovery process](#) that revealed key buried documents essential to the city's case. There were countless hearings during which the Lightfoot team steadfastly defended the validity of crucial claims against the contractor. Despite repeated attempts by the contractor to have the case dismissed, Lightfoot's team stood firm, skillfully navigating the complexities of the litigation.



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## The Result

Lightfoot's tenacious approach paid off: the contractor agreed to a favorable settlement with the city rather than going to trial. **The firm recovered a total of \$21.3 million from the contractor, split between an upfront payment and continuing payments and free services throughout the remainder of the contract.** In addition, the contractor agreed to provide free maintenance on all 119 buildings for the rest of the contract.

While EPSCs can offer substantial benefits to governments with significant infrastructure needs, they also come with risks. Turning to a provider offering an EPSC is an attractive solution for counties and municipalities. They must understand, however, that these arrangements, if not scrutinized, can fail to deliver promised savings and potentially leave them in worse financial positions than if they had funded improvements directly.

The Corporate Plaintiff's Litigation team at Lightfoot has the experience and determination to help governments pursue restitution when EPSCs fall short. They are a dedicated group of lawyers with the technical knowledge and determination required to hold contractors accountable – ensuring taxpayer dollars are protected.



# VALUE OF EXPERIENCE

### About Lightfoot, Franklin & White LLC

Trusted by clients and respected by opponents, Lightfoot is a leading national litigation firm. True to its "Trial Tough, Solution Savvy" philosophy, Lightfoot has been named a "Top 20 Trial Law Firm" in the U.S. by Benchmark Litigation since 2019. Working from offices in Birmingham and Houston, the firm's 60+ lawyers are known for their work involving complex, bet-the-company litigation; internal and government investigations; risk management; and compliance counsel, including NCAA matters, for clients across the country and around the world. For more information, visit [lightfootlaw.com](http://lightfootlaw.com) and connect with us on [Facebook](#), [LinkedIn](#) and [X](#).



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