News Analysis

The \$1B Question: Can Puerto Rico Afford Its Bankruptcy Bills?

By Sindhu Sundar | February 18, 2019, 8:13 PM EST



Puerto Rico bankruptcy proceedings have been occurring at Clemente Ruiz Nazario courthouse in Hato Rey, Puerto Rico. (Getty)

Last March, the fee examiner scrutinizing law firms and other professional service providers in Puerto Rico's sprawling restructuring proceedings raised a red flag. The group had already sought at least \$77 million in fees and costs for the five months on the case, and he didn't seem entirely convinced of the tab.

Why were some professional services firms staffing cases so heavily — two firms he didn't name had each reported more than 125 timekeeping professionals — and sending so many attorneys to hearings?

"It is unreasonable, whether the clients or the professionals make the staffing decisions, to expect

compensation for 12 attorneys from a single firm to attend an omnibus hearing at which only one or

two were expected to speak," Brady C. Williamson of Godfrey & Kahn wrote in his initial report to Judge Laura Taylor Swain, who is overseeing Puerto Rico's bankruptcy. Williamson isn't the only one raising the alarm. As Puerto Rico's fiscal board calls for belt-tightening measures across public

charge. "All these legal fees are coming out of the people of Puerto Rico, and all those funds that are going to be spent on legal fees as part of these proceedings are funds that are not going be available for the government of Puerto Rico to provide services," said José Nieto, a longtime local litigator and now the partner in charge of Weisbrod Matteis & Copley's San Juan office. "The relevant question, I think, is can we afford to have a process that is run by attorneys charging

this amount of money?"

expenditures, and the island still recovers from the costly

devastation of Hurricane Maria, local attorneys are starting to

question the fees as well, especially given how much less local firms

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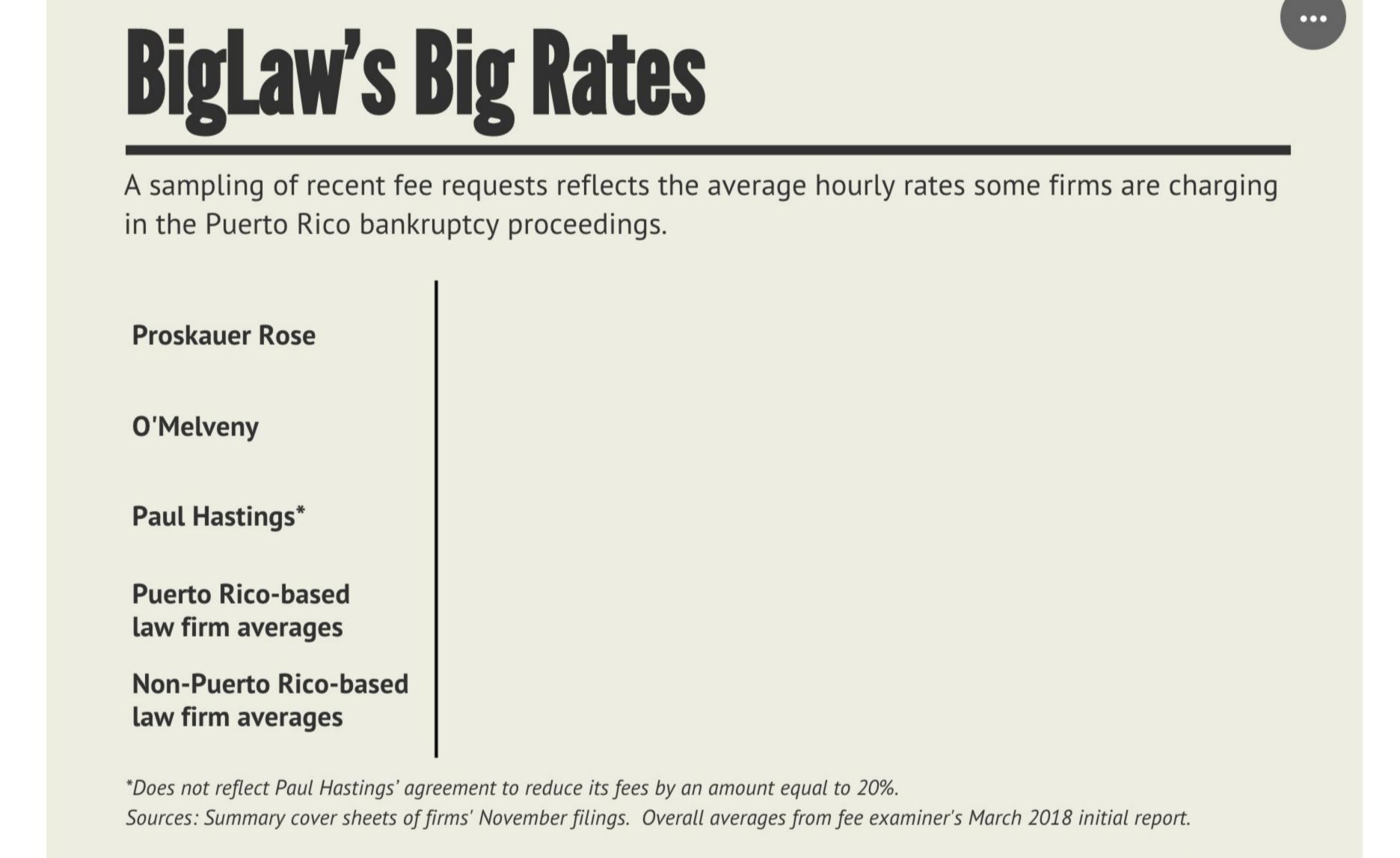
According to the fee examiner's most recent public estimate on Jan. 23, more than three dozen professional service providers, including law firms, have sought a total of roughly \$304 million in fees and expenses in the restructuring through the end of September.

the bills continue to roll in. By 2023, the commonwealth expects the total tab for professional services in the \$120 billion restructuring to surpass \$1 billion.

A portion of those requests have already been approved, but many are still under review. Meanwhile,

Puerto Rico's sprawling restructuring officially began in May 2017, four months before Hurricane Maria made landfall as a Category 4 storm and plunged the already-struggling island into further economic strife. The size of its debt has grown to more than \$70 billion in financial debt and more than \$50 billion in pension liabilities, an amount Puerto Rico noted in its fiscal plan is almost twice the size of its economy.

Familiar BigLaw names playing prominent roles in the proceedings include Proskauer Rose LLP, which represents the island's fiscal oversight board, O'Melveny & Myers, which represents the Puerto Rico Fiscal Agency and Financial Advisory Authority, and Paul Hastings LLP, which represents the unsecured creditors committee.



The fees charged by Proskauer, which is defending the board in more than 70 cases mostly by various creditors, represent a discount of more than 30 percent off its usual costs, according to Martin Bienenstock, chair of Proskauer's business solutions, governance, restructuring and bankruptcy group. Paul Hastings said it has offered a 20 percent discount on its overall fees to the unsecured creditors' committee, and O'Melveny is also providing a discount to AAFAF.

Bienenstock said Proskauer is scrupulous about the number of attorneys it puts on matters in the case, including how many of its attorneys attend hearings.

"Every matter is staffed leanly to an extreme," he said. "Bottom line, the staffing reflects how many issues and objections we have to be ready to deal with."

Attorneys for O'Melveny and Paul Hastings had no comment.

Some local attorneys argue that the expense could be reduced if Puerto Rico's agencies chose local firms with lower hourly rates. The average hourly rate charged by firms based in New York and elsewhere outside of Puerto Rico is around \$775, while that figure for firms based in Puerto Rico is around \$275, according to estimates in the fee examiner's initial report in March.

said Rolando Emmanuelli, an attorney representing PREPA utility workers and retirees in suits against the fiscal board. "We cannot have the same professionals and the same hourly fees that they use to do business in the [mainland] U.S." Indeed, local firms handling aspects of the bankruptcy are charging much less. In a Nov. 16 filing,

"We cannot afford the same amount of cost and fees that any other bankruptcy in the U.S. incurs,"

O'Neill & Borges LLC, which represents the fiscal board, said its blended hourly rate for all attorneys was roughly \$210. Marini Pietrantoni Muñiz LLC, which represents the Puerto Rico Fiscal Agency And Financial Advisory Authority, reported its blended hourly rate for partners at nearly \$228 and roughly \$145 for associates and other attorneys.

But billing rates alone aren't an adequate frame of reference, say some bankruptcy experts. For one,

the island's restructuring is not governed by Chapter 11 laws meant for corporate bankruptcies or by

Chapter 9 laws for municipal bankruptcies, although it incorporates provisions from those laws.

Restructuring Price Tag Puerto Rico projects that the total professional fees and costs of its restructuring will surpass \$1 billion. Here's how it compares with other recent restructurings. Fees to funded debt Bankrupt Entity Date filed **Oustanding debt Total fees and expenses** Source: Fiscal Plan for Puerto Rico, October 2018

Instead, Congress devised a novel restructuring framework in 2016 tailored for the island, passing the Puerto Rico Oversight Management and Economic Stability Act, or PROMESA. The Financial

The board's role is also being contested in a number of proceedings. In fact, the First Circuit **ruled Friday** that the way members of the fiscal board were appointed, without a formal Senate confirmation process, was unconstitutional.

under PROMESA to oversee the island's budget.

Oversight and Management Board for Puerto Rico, often referred to as the fiscal board, was created

"You can imagine looking at this and saying, 'Well, these fees are high,' but what did you expect with a brand-new statutory structure, with more than a \$100 billion dollars in debt to be restructured, and multiple proceedings going on?" said Andrew Dawson, law professor at the University of Miami. "And we have the government here, with an uncertain role, and the fiscal oversight board with an uncertain role, what did everyone expect? Of course this was going to be expensive."