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Cravath Takes on Harrisburg Bankruptcy Work Pro Bono

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Of the Legal Staff

After five law firms pitched Harrisburg City Council to help the financially beleaguered city through a potential bankruptcy, one of the council members said in media reports the city would look to negotiate the proposed hourly rates, which ranged by firm from \$200 to \$975 an hour.

Negotiate they did. The city has chosen New York heavy-hitter Cravath Swaine & Moore to represent it through either a Chapter 9 municipal bankruptcy or a move to a distressed municipality status under Pennsylvania's Act 47. It was assumed at the time that Cravath, the largest of the five firms to pitch the city, was the one with the \$975 hourly rate. But that doesn't matter now that the firm has decided to represent the city pro bono in what the law firm called "one of its most significant public service commitments in years."

Partners Richard Levin and Paul H. Zumbro will lead the team. Levin has experience with the rarely utilized Chapter 9 filing. He currently represents New York City Off-Track Betting Corp. in the only Chapter 9 case ever filed in New York state.

The firm said Levin, who heads Cravath's restructuring practice, was one of the principal drafters of the 1978 Bankruptcy Code, which included a major revision to the municipal bankruptcy law. Levin said late last month that his firm doesn't have experience with Act 47 given Cravath doesn't have a presence in Pennsylvania. But he said he thought his was the only of the five firms in play to ever handle a Chapter 9 case.

Harrisburg received 12 responses to its RFP and asked five firms to come in for interviews. Aside from Cravath, Harrisburg firms Cunningham & Chernicoff and Van Eck & Van Eck were in the mix as were Philadelphia-based Fox Rothschild and Dilworth Paxson.

According to a statement from Cravath, the firm will focus its representation on the advisability of filing a municipal bankruptcy case under Chapter 9, and, as needed, on issues regarding the Pennsylvania Municipalities Financial Act (Act 47). The advice will assist City Council in evaluating the debt restructuring alternatives, and the firm would also represent



LEVIN



ZUMBRO

the city in any Chapter 9 filing, Cravath said in the statement.

Zumbro said he received a call Tuesday from a City Council member letting him know Cravath was one of two firms still in the running and that the council wanted to discuss fee arrangements with the firms before announcing its decision at a Tuesday night hearing.

Zumbro said he got the sense Cravath was the preferred choice, "but understood that our rates could be a real issue for them politically and otherwise."

After the team thought about it and ran it up the food chain for approval, the decision was made to represent the city for free. He said the city was "stunned" and "pleasantly surprised" when Cravath told them of its decision. Zumbro said he still thinks the firm's experience was what really put it over the edge, because it wouldn't have made it to the final two if its standard rate card was that much of an issue.

Zumbro emphasized that Cravath's hire isn't an indication the city has decided to file for Chapter 9. The firm will now work with the city to see if such a filing is even feasible and will hopefully be able to help get the creditors to the table, he said.

"It will be a long and difficult process, but that is always the case," Zumbro said. "Now we need to start the hard work and dig in a little deeper as to what the situation is."

Zumbro said the firm would most likely have to hire local Pennsylvania counsel regardless of what route Harrisburg ends up taking because court rules might require that. There haven't

been any discussions with local counsel yet to know whether the pro bono commitment would apply with that firm as well, he said.

Media reports put Fox Rothschild as the other firm in competition with Cravath at the end.

"We appreciate what a difficult decision selection of counsel was for Harrisburg City Council, particularly during this hard time for the city," Fox Rothschild partner Michael J. Viscount Jr. said in a statement. "It was a highly competitive process for the law firms involved, which is evident from the fact that the decision came down to the wire. In the end we hope that the pro bono efforts yield positive results on behalf of Harrisburg."

Both the Chapter 9 bankruptcy and Act 47 present their own benefits and challenges.

Pike County's Westfall Township went through earlier this year what was believed to be the first successful Chapter 9 reorganization in the state. The township was represented by J. Gregg Miller of Pepper Hamilton. The firm was conflicted out of representing Harrisburg in its financial crisis.

At the time of Westfall Township's bankruptcy in March, Miller told *The Legal* the main difference between Act 47 status and a Chapter 9 filing is that under Chapter 9 the court has the power to bind creditors who won't agree to settlements whereas that power doesn't exist under Act 47. Under the act, no state law can force a creditor to accept less than 100 cents on the dollar. Chapter 9 proceedings, however, can be far more costly and time consuming, he said.

Part of an Act 47 review could result in the suggestion that a municipality go into Chapter 9 bankruptcy. The city has already applied for the status and is awaiting approval from state officials. The RFP issued by Harrisburg requested that firms include in their submissions information related to both Act 47 and Chapter 9. •

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