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Are Foreclosure Attorneys Illegally Outsourcing Legal Work to Non-Lawyers?

By [ABIGAIL FIELD](#) Posted 4:30 PM 02/07/11 [Columns](#), [Economy](#), [Investing](#), [Real Estate](#)
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An awful lot of attorneys are in deep trouble, two companies will be destroyed, two more will be deeply damaged and a venture capital firm faces big losses, if the allegations in a [lawsuit updated Monday](#) are true.

Jonathan and Darlene Thorne accuse the companies, LPS Default Solutions and Prommis Solutions, and their attorneys of having an illegal and fraudulent business model through which non-attorneys secretly practice law and illegally share legal fees. Because many of these fees are for bankruptcy work and are ultimately paid by the debtor, the suit explains, the business model isn't just illegal -- it's also a fraud on the bankruptcy court system in violation of the bankruptcy code, rules and processes.



Although many of the basic [allegations have been known since last October](#), when the original suit was filed, the new complaint contains far more detail about some of the companies involved, particularly Prommis Solutions and its venture capital funder, Great Hill Partners. The suit also adds detail about the time pressure LPS Default Solutions puts on its network attorneys, and how that pressure allegedly feeds document fraud in foreclosure filings, whether in state or bankruptcy court. Given LPS's dominant market position, those pressures have widespread consequences.

LPS and Great Hill Partners have not returned requests for comment about this case. Prommis Solutions general counsel Richard Volentine says: "Our position is pretty much the same as it's always been. We think the claims are without merit and will continue to defend ourselves vigorously."

Illegal Business Model

In a nutshell, two foreclosure middlemen, LPS Default Solutions and Prommis Solutions, gain revenue not from their bank "clients" -- their services are free to the banks -- but from attorneys in the foreclosure companies' networks. The suit says the lawyers pay for referrals and all of the legal documents created by the non-lawyers that LPS and Prommis give them. (LPS says the attorneys pay for administrative and technology services.)

The suit says about a third of the attorneys' fees flow to LPS. Because banks don't have to pay for LPS's services, LPS Default Solutions rapidly gained over half the foreclosure servicing market.

According to the complaint, McCalla Raymer, one of the attorney firms in Default Solutions' network, decided LPS's fee-splitting business model was great and decided to participate. It just needed funding to go large. So it turned to venture capital firm Great Hill Partners, which was looking for a way to profit from the housing crash.

Great Hill purchased all the "non-legal" assets of the law firm -- everything but the lawyers and their license -- formed Prommis Solutions and then inserted Prommis between Default Solutions and McCalla Raymer. According to the complaint, Prommis takes as much as another third of the legal fees generated by McCalla Raymer for the support services it provides the law firms. Using Great Hill funding, Prommis bought three the "non-legal" assets of other creditor firms and similarly stepped between them and LPS.

Prommis: Aware of the Risks

Although [LPS has aggressively denied](#) that it does anything illegal, and says that it isn't fee-splitting at all, Prommis has been more honest. At one point, Prommis was considering an initial public offering and made a filing with the Securities and Exchange Commission that [detailed the risks associated with its business](#). One risk? The authorities could decide it was illegally practicing law. Another? That Great Hill controlled it, and would continue to after the IPO.

Great Hill's control could hurt other shareholders, the filing explains, because Great Hill could cause the company to work in Great Hill's interest. Because of Great Hill's control of Prommis, the amended complaint charges Great Hill with "control fraud," seeking to hold Great Hill liable for Prommis's actions.

I asked Volentine why he was so sure the lawsuit had no merit, given that Prommis's SEC filing disclosed the suit as a possible risk for shareholders that the company could be found to be illegally practicing law. "We'll make our arguments in court as needed," he responded. "We're aware and have been very open about the risks we face. In filing the S-1, we felt we made the appropriate disclosures about our potential risks."

The complaint paints Great Hill as particularly exploitative, noting that Prommis's contracts with its four law firms reset every six months so that it can adjust its fees to extract more of the law firms' revenue. Indeed, it's not clear what value Great Hill/Prommis provides to the banks employing its law firms, given that it stands between LPS and those firms. Based on the complaint, it seems like Prommis exists primarily to take a cut of the legal fees created by LPS's market-dominating position.

Billions of Dollars at Stake

If the Thornes win their case, the business model of LPS Default Solutions and Prommis Solutions will be illegal, driving them out of business. It'll be interesting to see how the market reacts to this updated complaint, since LPS is publicly traded. In the wake of LPS's fourth-quarter earnings announcement, [analysts were positive](#).

In addition, all of the thousands of attorneys that have contracted with the companies -- and thus shared fees with them -- could face discipline, including disbarment. Finally, the owners of each, Lender Processing Services ([LPS](#)) for Default Solutions and Prommis Solutions Holdings plus Great Hill Partners, could take massive financial hits.

That's because, as the [blog Naked Capitalism explained](#) when the suit was originally filed, disgorgement is the typical remedy for illegal fee-sharing. Since every dollar of revenue both foreclosure subsidiaries have ever earned comes from allegedly illegally shared attorney's fees, the companies and their parents could have to pay it all back. It's hard to see how the highly leveraged LPS could repay the billions it has earned from its foreclosure subsidiary.

Prommis Solutions Holdings is not a publicly held company, and its foreclosure subsidiary is much smaller than LPS's, so it's harder to be sure about the impact of coughing up all of its foreclosure subsidiary's fees. However, it won't be easy: The whole point is that the business model is a cash cow. Indeed, the IPO filing says Prommis made \$255 million in 2009.

So Prommis Holdings, and thus Great Hill Partners, will have a big bill to pay if forced to disgorge all of Prommis Solutions' revenue. Moreover, the suit demands damages beyond disgorgement, including punitive damages, making the ultimate risk much greater.

Finally, even before the lawsuit goes to trial, all the companies can be damaged by shareholder suits, copycat lawsuits or law enforcement investigations. Indeed, [LPS is already facing a shareholder lawsuit](#) and [investigations](#), and both are facing other [class action lawsuits](#).

The Connection to Document Fraud

The complaint's detailed explanation of how LPS works, fleshing out the company's previously reported relentless focus on speed and volume, makes the connection to document fraud this way:

[Since LPS rewards firms for speed with more money and more work, LPS creates] "tremendous pressure for the lawyers involved to go to the golf course and ignore the documents provided [by LPS Default and just let the non-lawyer staff at Prommis Solutions file the documents electronically for them until there is a problem...[there's] so much financial pressure on the lawyers to perform actions rapidly that it should be clear that there can be no meaningful attorney involvement in the vast majority of these filings."

Not only does the preparation and filing of legal documents by non-lawyers constitute the illegal practice of law and involve illegal fee-splitting, in the foreclosure context it's a [real threat to the validity of the foreclosures](#) completed using these firms or in this manner.

Beyond the problems tied to non-lawyers practicing law, this business model nearly guarantees fraudulent documents. How do you create paperwork at maximum speed without robo-signing? How do you maintain healthy profit margins unless you employ relatively uneducated people who have no idea what the paperwork they are processing means?

Deep Skills and Knowledge Are Necessary

The root of the alleged business model is to do have non-lawyers perform lawyers' work for much less money, and then have real lawyers nominally sign off on the documents to disguise the fact that the lawyers aren't doing the work.

As little respect as the general public may have for lawyers, the legal profession does involve skill and a deep base of knowledge: Even legal tasks that look like [empty-headed blank filling](#) -- completing an assignment of mortgage, for example -- are not. Properly transferring the ownership of real property is crucially important, and the failure to do so in possibly millions of cases across the country could trigger yet another stage of the housing meltdown as clouded titles thwart sales or force down prices to account for the attendant risks.

If that shoe drops -- personally I think it's less an "if" than a "when" -- people should remember it was the banks' embrace of LPS Default Solutions and then Prommis Solutions as cost-saving measures that created much of the problem.

Tagged: [Default Solutions](#), [fee sharing](#), [foreclosure document fraud](#), [foreclosure documents](#), [Foreclosures](#), [Great Hill Partners](#), [illegal](#), [law](#), [law firm](#), [legal](#), [LPS Default Solutions](#)

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Abigail Caplovitz Field

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Financial Writer

Abigail Caplovitz Field is an attorney with a solo general practice on Shelter Island, New York. After graduating from NYU Law with honors in 2001, she worked as an associate for a major corporate law firm in New York City, and then as a consumer and good government lobbyist for the New Jersey Public Interest Research Group. Her lobbying duties included identity theft prevention, financial privacy and health care. She's written on topics as diverse as pharmaceutical marketing, toxic pollution, and racial profiling.

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