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REPEAT: DOJ Probing Mortgage Data Processing Firms

(This version of this article was first published on April 16 but was inadvertently removed a short time later.)

("Justice Department Probing Mortgage Data-Processing Firms" published at 18:04 EDT on Thursday, April 16, misspelled the first name of Lender Processing Services Inc. spokeswoman Michelle Kersch in the sixth paragraph. The correct version follows.)

By Peg Brickley
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The Department of Justice is conducting a nationwide probe of the company whose automated systems handle half the mortgages in the U.S., looking for evidence Lender Processing Services Inc. (LPS) has "improperly directed" the actions of lawyers in bankruptcy court.

The Jacksonville, Fla., company was spun out last year from Fidelity National Information Services Inc. (FIS), a financial technology giant that is also under scrutiny for its role in court actions, according to documents filed with the U.S. Bankruptcy Court in Philadelphia.

Although the companies say they are providers of electronic information services, the U.S. trustee believes LPS and Fidelity play a "much greater" role in court actions where thousands of homes are at risk of foreclosure, according to Bankruptcy Judge Diane Weiss Sigmund.

"The thoughtless mechanical employment of computer-driven models and communications to inexpensively traverse the path to foreclosure offends the integrity of our American bankruptcy system," Sigmund wrote in a decision released Wednesday, April 15.

A spokeswoman for Fidelity did not respond to requests seeking comment on the investigation by the Office of the U.S. Trustee, an arm of the Department of Justice whose mission includes safeguarding the integrity of the bankruptcy courts.

Michelle Kersch, a spokeswoman for LPS, said the U.S. trustee has "advised outside counsel for LPS that it is seeking to better understand LPS' role." In an e-mail, Kersch pointed out that the judge held the lawyers, not LPS, responsible for the problems in the case before her.

The probe of the mortgage technology operation surfaced in a Philadelphia case after Sigmund started asking questions about the source of false court filings that came from HSBC Mortgage Corp. In pursuit of homeowners Niles and Angela Taylor, HSBC filed the wrong mortgage, gave incorrect payment amounts and claimed the Taylors had missed monthly payments. This "was simply not true," Sigmund wrote in a 58-page decision.

Pressed to produce a loan history for the Taylors, HSBC's lawyer confessed the system simply wouldn't give it to him.

HSBC, it turns out, had handed off servicing of the troubled loan to Fidelity, which spun out LPS last year. The processes the company uses to crank out court documents for fast, cheap foreclosures were the culprit, the judge found.

By forcing lawyers to talk to computers rather than to their clients - the lenders - LPS makes it hard for lawyers to

do right by the court and discharge their ethical obligations, Sigmund said.

Lawyers at one level spot-check a fraction of the documents that are on their way to foreclosure actions, Sigmund found. But the business is built for profitability rather than reliability, and counts on "lower-cost labor," according to the judge.

Although LPS's system "has many features that make a volume business process more efficient, the users may not abandon their responsibility for fairness and accuracy to the seduction of electronic communication," Sigmund wrote.

She faulted HSBC and some of the lawyers involved in the case for having "sacrificed accuracy and fairness to efficiency and cost-savings," by relying on LPS's systems.

Fidelity, later LPS, is the electronic powerhouse behind the foreclosures rolling through much of the country, taking in data and spitting out loan-default notices for 16 of the 20 largest mortgage-loan servicers in the nation. Banks like HSBC and mortgage servicers outsource the handling of their troubled loans to LPS's default management services business.

Business is booming in the loan default unit, LPS's financial reports say, with revenue up 68.3% for the fourth quarter of 2008, compared with the same period a year earlier.

Consumer advocates have long complained that Fidelity and LPS are much more than electronic data providers. The companies say which lawyers get the lucrative business of foreclosing on troubled homeowners. Those who move the fastest are rewarded, said O. Max Gardner III, a consumer bankruptcy attorney. Those who pause to ask questions or to investigate whether a loan should be foreclosed, don't last as LPS network attorneys, Gardner said.

"The Fidelity-LPS system represents a complete outsourcing of the foreclosure and bankruptcy process to a third-party, Fidelity-LPS, who then manages the entire legal process," Gardner said in an e-mail Thursday, April 16.

Sigmund's opinion revealed that the Department of Justice is looking at Fidelity, LPS and the law firm that handles HSBC Mortgage Corp.'s troubled loan business nationwide, Moss Codilis LLP.

Moss Codilis did not reply to an e-mail seeking comment on the investigation, which involves a number of bankruptcy cases, according to Philadelphia court documents.

(Dow Jones Daily Bankruptcy Review covers news about distressed companies and those under bankruptcy protection.)

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