

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FINANCIAL INSTITUTIONS DIVISION,
Petitioner,

v.

NO. D-202-CV-2017-03838

DESERT STATE LIFE MANAGEMENT, *et al.*,

Respondents

RECEIVER'S MAY 2019, MONTHLY REPORT

COMES NOW, Christopher Moya, court-appointed Receiver for Desert State Life Management (DSLML) and Acting Director of the Financial Institutions Division (FID) of the New Mexico Regulation and Licensing Department, by and through the FID's attorney of record, Kevin A. Graham, and provides the Court with the following Receiver's May 2019, Monthly Report.

CONTINUING ACTIVITIES OF THE RECEIVERSHIP

1. **Funds:** The Receiver is in control of the following bank accounts and funds in the name of DSLML and account balances as April 30, 2019, stood at the following amounts:

DSLML Accounts with New Mexico Bank and Trust:

(1)	"Operations" account:	XXXX190	\$0.00
(2)	"Sweep" account:	XXXX041	\$0.00
(3)	"Pooled Savings" account:	XXXX119	\$233,465.62
(4)	"Trust Cash" account:	XXXX127	\$45,403.71
(5)	"Recovery" account:	XXXX309	\$13,428.23
(6)	"Trust Checks" account:	XXXX116	\$1,340.60

2. Examination of Records and Accounts:

Progress towards the completion of scanning client records of DSLM continues to be slowed due to lack of available staff within the Financial Institutions Division. Approximately seventy-five percent of the total bulk of paper-based client records have been electronically scanned, with the scanning of all currently active client files completed. The revised goal for completion of all client file scanning is the end of July 2019. The Receiver continues to prioritize the scanning of individual client files whenever contacted by trust beneficiaries/representatives seeking copies of individual client trust files.

3. Progress Toward the Appointment of Successor Trustees:

As noted previously, a small number of trusts have been transferred to specific successor trustees identified by individual trust beneficiaries when those successor trustees could be verified as being appropriately qualified to serve as trustees for the respective trusts. Over fifty (50) trusts that continue to under the trusteeship of the receivership for DSLM have no successor trustees identified/recommended by the trust beneficiaries (or representatives of the trust beneficiaries). The Receiver continues to work to identify qualified successor trustees who are willing to take on the fiduciary responsibilities of a successor trustee for the trusts. Given that many of the trusts at issue have either no current funds in trust, or only a very small amount of funds remaining, the options for finding qualified trustees who are willing to take on the trusts have been very limited. The Receiver believes it will be necessary to obtain orders from this court regarding specific client trusts in order to transfer the majority of remaining

trust clients to permanent successor trustees. Upon obtaining such court orders, the Receiver believes it will be possible to transfer the majority of the remaining trust accounts to a recently certified New Mexico non-profit trust company to take over trustee duties for those trusts that qualify as “special needs” trusts under relevant federal Medicaid and Social Security laws. The Receiver is working towards transferring trust accounts to the non-profit trust company in a series of steps, with a few of the most active trust accounts being transferred first, and then additional trust accounts being transferred over a period of the next few months.

As noted previously, the Receiver’s intention is to file a series of motions in the above-captioned case to obtain the necessary court orders to have these trusts transferred to successor trustees. The Receiver will endeavor to assure notice is provided to all required/interested parties concerning the proposed transfer of the trust accounts to successor trustees. The Receiver further anticipates at least one court hearing (perhaps more than one) will be necessary in order to afford all such required/interested parties an opportunity to be heard concerning the proposed transfers.

4. Insurance Policies/Coverage for DSLM: The Receiver continues to encourage all clients of DSLM to consult with their personal legal advisors and counsel regarding their legal rights and any claims they may have against the insurance coverage for DSLM. Those insurance companies, and contact information for the companies are as follows:

“Directors and Officers Policy” # AZP349837/BCN-0007591
Agent: Western Assurance Co.
P.O. Box 96400
Albuquerque, NM 87199-4600;

Or
3701 Paseo Del Norte Ne Ste 200
Albuquerque, NM 87113-1578
Telephone: 505-265-8481
Fax: 505-266-3500
Email: receptionist@westernassurance.com
Agency Number: 30-001
Policy No. BCN-0007591

Company Issuing Policy: The Cincinnati Insurance Companies
P. O. Box 145496
Cincinnati, OH 45250-5496
Telephone: 513-870-2000
Policy Number: 05BCN0007591
Policy No.: BCN0007591
Notice Date: 03/28/2017
Claim Number: 2864999
Adjuster: andrew_eminger@cinfin.com

“Employee Dishonesty Policy” # AZP-340134

“E & O/GL policy”

Agent: Western Assurance Co.

P.O. Box 96400
Albuquerque, NM 87199-4600

Company Issuing Policy: Evanston Insurance Company ADCO General
Policy # EO865156
Billing/Payment Company: IPFS Corporation
P.O. Box 412086
Kansas City, MO 64141-2086
Phone: 866-412-1793
FAX 919-234-2760
Account Number: AZP-340134

“Other”

The Travelers; Policy Number 105818345

Travelers
385 Washington Street
St. Paul, MN 55102
Phone: (651) 301-8986
Account Number: T1704210
Directed to refer to matter number 086-FA1-T1704210-NR on all communications.
Jessica Tabrizi
Claim Counsel
Bond & Specialty Insurance Claim
Phone: (909) 612-3650

Fax: (866) 842-9195
Email: JTABRIZI@travelers.com

5. Pending Class Action Lawsuit Against DSLM and other Defendants:

An “Amended Class Action Complaint” was filed on December 17, 2018, in the New Mexico Second Judicial District, Case No. D-202-CV-2018-04655, captioned “Cameron Graham, as trustee for Andrew Graham, *et al.* v. Desert State Life Management, *et al.*” The case had been assigned to the docket of the Hon. Judge Joshua Andrew Allison. The Receiver is of the belief that the class action status of the case will be certified by the court, and that this lawsuit may constitute a means whereby the individual trusts and/or individual trust beneficiaries that suffered losses due to the conduct of the former chief executive officer of DSLM may benefit from any judgment obtained on behalf of the proposed class. The Receiver intends to follow the progression of this civil suit and will endeavor to keep the Court apprised of any developments in that lawsuit that may impact the receivership.

6. Federal Criminal Prosecution:

On February 22, 2019, Paul A. Donisthorpe was sentenced in United States District Court for the District of New Mexico [Case No. 2017-3311 JB, United States of America v. Paul A. Donisthorpe] on two federal felony criminal counts that arose from his conduct as Chief Executive Office of Desert State Life Management and in his capacity as trustee for the multiple trusts overseen by the company. Mr. Donisthorpe was sentenced to serve twelve (12) years of incarceration, serve one hundred (100) hours of community service, and was ordered to repay an amount in excess of six million dollars (\$6,000,000) in criminal restitution. The Receiver continues to work in coordination with the United States Attorney’s Office for the District of New Mexico on this matter.

Any DSLM clients, or their representatives, or other interested parties, who have questions regarding the Donisthorpe sentencing or any rights of victims related to this matter are encouraged to contact the United States Attorney's Office by contacting:

Alyssa Skrepcinski
Victim Advocate
Office of the United States Attorney for the District of New Mexico
(505) 224-1427
201 Third St. NW, Suite 900, Albuquerque NM 87102.

7. Civil Action Filed in Federal Court by Evanston Insurance Company:

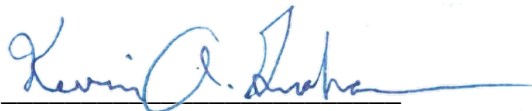
A civil action was filed in the United States District Court for the District of New Mexico by Evanston Insurance Company [Evanston Insurance Company v. Desert State Life Management, *et al.*, 1:18-cv-00654-LF-KK, filed July 10, 2018], whereby the company is seeking declaratory judgment that the company will not be liable for the payment of any claims brought against DSLM that might have been subject to coverage under the "Errors and Omissions/Employee Dishonesty" policy [Policy # EO865156] purchased by DSLM. The Receiver has filed a motion to dismiss the Second Amended Petition and has joined in the Motion to Dismiss filed by counsel representing the victims of Paul Donisthorpe/DSLM in the proposed state class action case. A scheduling order has been entered on this case by the federal court, and pre-trial discovery is currently underway.

8. Civil Action Filed in Federal Court by The Cincinnati Insurance Companies:

A civil action was filed in the United States District Court for the District of New Mexico by the Cincinnati Insurance Companies [Cincinnati Insurance Company v. Desert State Life Management, *et al.*, 1:18-cv-00981-LF-SCY, filed October 22, 2018], whereby the insurance company is seeking declaratory judgment that the company is not liable for the payment of any

claims brought against DSLM that might have been subject to coverage under the “Directors and Officers” policy [Policy # AZP349837/BCN-0007591] purchased by DSLM. The Receiver has been named as a defendant in this action in his capacity as the receiver for DSLM. The Receiver filed an answer to the petition on January 31, 2018, as well as joining in the Motion to Dismiss filed by counsel representing the victims of Paul Donisthorpe/DSLM in the proposed state class action case.

On behalf of the Receiver, Christopher Moya, the foregoing is respectfully submitted by:



5/2/2019

Kevin A. Graham
Counsel to the Receiver/
Senior Enforcement Counsel
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New Mexico Regulation and Licensing Department
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P.O. Box 25101
Santa Fe, New Mexico 87504
(505) 476-4971

Date

CERTIFICATE OF SERVICE:

The undersigned hereby certifies that a true and correct copy of the foregoing pleading was delivered by electronic mail and/or U.S. Mail, postage prepaid, addressed to each of the following:

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and
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