

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 JULY 2020, MONTHLY REPORT

COMES NOW, Christopher Moya, court-appointed Receiver for Desert State Life Management (DSLML) and 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 July 2020, 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 July 1, 2020, 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	\$421,129.59
(4)	"Trust Cash" account:	XXXX127	\$35,010.83
(5)	"Trust Checks" account:	XXXX116	\$0.00

Examination of Records and Accounts:

Scanning of client records of DSLM over the past month, continued to be at a standstill due to the COVID-19 emergency stay-at-home order, and all employees of the FID being under orders to work home as a result of the ongoing COVID-19 public health emergency. Efforts to complete the scanning of DSLM records will recommence when FID employees are permitted to return to the FID offices and again have access to necessary scanning equipment and access to the hardcopy/paper files of DSLM still remaining to be scanned.

3. Progress Toward the Appointment of Successor Trustees:

Progress on transferring DSLM trust files to successor trustees has likewise been delayed by the COVID-19 public health emergency. The Receiver will pursue a status-conference on this matter when the public health emergency has been lifted, or upon notice from the court that a hearing has been scheduled by the court.

As previously reported, the fact that many of the trusts under the trusteeship of the receivership for DSLM have either no current funds held in trust, or only a very small amount of funds remaining, has resulted in the options for finding qualified successor trustees who are willing to take on the trusts being 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. The Receiver's plan continues to be to transfer the majority of the remaining trust accounts to a 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 plans to transfer 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.

The Receiver will endeavor to assure notice is provided to all required/interested parties concerning the proposed transfer of the remaining trust accounts to successor trustees. The Receiver anticipates a series of court hearings will be necessary to accomplish the transfer of these trusts to successor trustees. The Receiver believes a public hearing will be required on these motions in order to afford all 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

is assigned to the docket of the Hon. Judge Joshua Andrew Allison, and the case is currently set for a trial date of June 14 - 25, 2021. UPDATE: A mediation of this matter (which will include representatives for Evanston Insurance Company and Cincinnati Insurance Company) is scheduled for July 7th, 2020.

A motion to deny the class certification on this case was recently denied by the district court. The Receiver continues to believe 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 class plaintiffs. Counsel for the Receiver filed a Motion to Join Third Party Defendants in this case, seeking to have Evanston Insurance Company and the Cincinnati Insurance Company added as third party defendants (both these companies issued insurance policies to DSLM that were in effect at time DSLM went into receivership). The Receiver will continue to provide updates to the Court through these monthly reports as to significant developments in the proposed class-action lawsuit that may impact the receivership.

6. Federal Criminal Conviction / Federal Civil Forfeiture Action against Paul Donisthorpe:

To the Receiver's knowledge, Paul A. Donisthorpe continues to be incarcerated in federal prison following his conviction and sentencing on Case No. 2017-3311 JB, United States of America v. Paul A. Donisthorpe, for 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. The Receiver continues to attempt to work in coordination with the

United States Attorney's Office for the District of New Mexico on this matter.

The Receiver has no new information for the Court regarding the property located in Texas that was seized by the United States of America under federal forfeiture authority. The Receiver continues to be hopeful that sufficient funds will be realized from the forfeiture of the assets located in Texas, as well as properties located in New Mexico, to result in some funds being made available for restitution to be paid to the victimized trusts.

Any DSLM clients, or their representatives, or other interested parties, who have questions regarding the Donisthorpe plea, sentencing, or progress by the United States Attorney's Office to collect restitution or obtain funds to be applied toward restitution for the victims via the federal civil forfeiture process, are encouraged to contact:

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

7. Federal Court Declaratory Judgment case filed by Evanston Insurance Company:

A bench trial was conducted on the days of October 7 - 9, 2019, in U.S. District Court for the District of New Mexico, on the civil action brought by Evanston Insurance Company [Evanston Insurance Company v. Desert State Life Management, *et al.*, 1:18-cv-00654-LF-KK]. In that case Evanston seeks declaratory judgment that the insurance 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. On January 28, 2020, Judge Browning issued his order denying the motion for summary

judgment that had been filed by Evanston. As of the date of this report, no decision has yet been rendered by the Court as to the outcome of the trial on the matter.

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

A scheduling order has been issued for the civil action 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], wherein Cincinnati seeks 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. Litigation of the matter continues.

9. Claim for Insurance Coverage Filed by Receiver on the Travelers Insurance Policy for DSLM:

On January 3, 2020, the receivership filed an executed “Proof of Loss” claim form and associated documentation with Travelers Insurance on Policy Number 105818345 issued to DSLM. In that “Proof of Loss” the receivership sought coverage for direct losses to DSLM in the amount of \$30,905.00 and for losses resulting from employee theft and funds transfer fraud in the amount of \$4,933,626.58. In a letter dated June 15, 2020, from Jill James, Claims Counsel for Travelers, Travelers acknowledged receipt of the proof of loss and informed the Receiver of Travelers’ initial coverage evaluation of the matter, which may be summarized as Travelers’ having opined there is no coverage available for this matter under the above-reference policy and a reservation of rights by Travelers. The Receiver is evaluating the information/opinion received

from Travelers regarding coverage (or the lack thereof) and contemplating the receivership's next appropriate steps regarding this policy.

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



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Counsel to the Receiver/
Deputy General Counsel
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Santa Fe, New Mexico 87504
(505) 476-4971

7/1/2020
Date

CERTIFICATE OF SERVICE:

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

1. Ray M. Vargas, II
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paul.kennedy@kennedyhernandez.com
Counsel for Liane Kerr

2. K. Stephen Royce
Cuddy & McCarthy, LLP
201 Third St. NW, Suite 1300
Albuquerque, NM 87102
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4. Spectrum Capital Markets,
LLC
*Via counsel for Paul
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3. Paul Kennedy
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201 12th Street NW
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5. Corazon Cattle
*Via counsel for Paul
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11. Maureen Sanders
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Kevin A. Graham

7/1/2020

Date