

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 OCTOBER 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 October 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 DSLM and account balances as October 4, 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	\$270,942.95
(4)	"Trust Cash" account:	XXXX127	\$53,424.93
(5)	"Recovery" account:	XXXX309	\$13,428.23
(6)	"Trust Checks" account:	XXXX116	\$1,300.00

2. Examination of Records and Accounts:

Progress towards the completion of scanning client records of DSLM continues to be slow due to lack of available staff within the Financial Institutions Division. The Financial Institutions Division has hired an additional attorney, and continues in the effort to bring on staff a law clerk to assist with document scanning matters. 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:

The Receiver has filed a request for the Court to set a status conference for the above-captioned matter, with the primary goal of discussing with the Court plans for how best to accomplish the transfer to appropriate successor trustees the remaining trust accounts that remain under the trusteeship of the receivership for DSLM. 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 has determined 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 believes it will be possible 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 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.

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 hearing) 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 has been assigned to the docket of the Hon. Judge Joshua Andrew Allison. The Receiver

continues to believe 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 has been following 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 of Paul Donisthorpe / Federal Civil

Forfeiture Action:

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. The Receiver continues to work in coordination with the United States Attorney's Office for the District of New Mexico on this matter. The Receiver has been informed by counsel from the U.S. Attorney's Office that there has been a sale of some of the property located in Texas that was seized by the U.S.A. and that it is anticipated some funds will be made available for restitution to be paid to the victimized trusts, but the final dollar amount available for restitution funds has not yet been calculated.

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
(505) 224-1427
201 Third St. NW, Suite 900, Albuquerque NM 87102.

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

A bench trial is set to begin on Monday, October 7, 2019, in U.S. District Court for the District of New Mexico, on the civil action was filed by Evanston Insurance Company [Evanston Insurance Company v. Desert State Life Management, *et al.*, 1:18-cv-00654-LF-KK, filed July 10, 2018], wherein 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.

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

A scheduling conference has been set for the date of November 19, 2019, on 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.

9. Action filed in Probate Court by Andrew Graham against Receiver Moya. The action filed in the Probate Court of the New Mexico Second Judicial District by Andrew R. Graham alleging damages owed by the Receiver was dismissed by order of the Court on September 4, 2019.

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



Kevin A. Graham
Counsel to the Receiver/
Deputy General Counsel
New Mexico Regulation and Licensing Department
2550 Cerrillos Road, 3rd Floor
P.O. Box 25101
Santa Fe, New Mexico 87504
(505) 476-4971

10/4/2019
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. Paul A. Donisthorpe
Inmate # 94504-051
United States Bureau of Prisons
Englewood Federal Correctional Institution
9595 West Quincy Ave.
Littleton, CO 80123

Albuquerque, NM 87102-1815
paul.kennedy@kennedyhernandez.com
Counsel for Liane Kerr

2. K. Stephen Royce
Cuddy & McCarthy, LLP
201 Third St. NW, Suite 1300
Albuquerque, NM 87102
Counsel for L. Helen Bennett

4. Spectrum Capital Markets, LLC
Via mail to Paul Donisthorpe

3. Paul Kennedy
Paul Kennedy & Associates
PC
201 12th Street NW

5. Corazon Cattle
Via mail to Paul Donisthorpe

6. Corazon-Pitchford, LLC
and/or Darrell Pitchford
Via mail to Paul Donisthorpe
and
Scott Fuqua
Fuqua Law & Policy, PC

P.O. Box 32015
Santa Fe, NM 87594
scott@fuqualawpolicy.com
Counsel for Darrell Pitchford

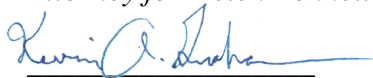
7. Paul A. Donisthorpe, LLC
Via mail to Paul Donisthorpe

8. Kenneth C. Leach
Kenneth C. Leach & Associates, P.C.
320 Osuna Road NE, Unit G-4, Box 15
Albuquerque, NM 87107
kcleach@kcleach.com
Counsel for Judith Mahar

9. Michael White
C/O La Pasada
2206 4th Street NW
Albuquerque, NM 87102

10. Frank Davis
Freedman Boyd Hollander Goldberg Urias
& Ward
PO Box 25326
Albuquerque, NM 87125-0326
ftd@fbdlaw.com
505.842.9960
*Counsel for Cameron Graham (Trustee of
the Andrew Graham Trust).*

11. Maureen Sanders
Sanders & Westbrook, P.C.
102 Granite Avenue NW
Albuquerque, NM 87102
(505) 243-2243
Attorney for Helen Bennett



Kevin A. Graham

10/4/2019

Date