

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FINANCIAL INSTITUTIONS DIVISION,
Petitioner,

v.

NO. D-202-CV-2017-03838
HON. NAN NASH

DESERT STATE LIFE MANAGEMENT, *et al.*,

Respondents

RECEIVER'S OCTOBER, 2018, 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, 2018, 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 October 2, 2018, 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	\$ \$142,250.57
(4)	"Trust Cash" account:	XXXX127	\$ 49,565.03
(5)	"Recovery" account:	XXXX309	\$ 13,428.23
(6)	"Trust Checks" account:	XXXX116	\$ 10,150.90

2. Examination of Records and Accounts:

Digital scanning of client account records continues. The target date for completion of scanning of all relevant client records of DSLM continues to be the end of November, 2018. As noted in prior monthly reports, the FID/Receiver's efforts to organize the DSLM corporate records and verify data have led to numerous determinations that certain vital records are missing from the DSLM files and/or that records containing incorrect and intentionally falsified records were created.

3. Necessity of Successor Trustees:

The Receiver continues the work of locating appropriate successor trustees and preparing to have DSLM client trust accounts transferred to permanent successor trustees. Discussions continue with 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.

NOTE: Counsel for the Receiver has determined that for the great majority of the trusts currently held in trusteeship under the receivership, it will be necessary to obtain a court order to have each individual trust transferred to a successor trustee. 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. Concerning such motions to transfer trusteeship, 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

NOTE: The Receiver continues to review relevant legal issues related to the Receiver’s authority under the terms of the individual trusts, the Uniform Trust Code and the New Mexico Receiver’s Act to retain legal counsel to represent the interests of each of the individual trusts in regards to pursuing insurance claims under the insurance policies providing coverage for DSLM and/or any officers, directors or employees of DSLM. The lack of funds in the

receivership to pay for legal expenses is certainly an issue. However, as is noted below, a recently filed Class Action lawsuit brought on behalf of the client trusts of DSLM may provide a reasonable solution to this concern.

5. Class Action Case Filed:

From the detail provided on the New Mexico Courts online case look-up site, a proposed class action lawsuit was filed on June 20, 2018, in the New Mexico Second Judicial District, Case No. D-202-CV-2018-04655, captioned as: Andrew Graham v. Desert State Life Management, *et al.* The case has been assigned to the docket of the Hon. Judge Shannon C. Bacon. While the Receiver has not been served in regards to this matter, it appears from the website that the same list of defendants have been listed in that case as are included as defendants in the above-captioned matter. The Receiver is of the belief that, should the class action be certified by the court, this class action civil suit 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 new 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: The Receiver continues to work in coordination with the United States Attorney's Office for the District of New Mexico to obtain restitution orders in the federal criminal case against Paul A. Donisthorpe. As of the date of filing of this Report, the sentencing date for Case

No. 2017-3311 JB, United States of America v. Paul A. Donisthorpe, still has not been set.

DSLMM clients and their representatives are encouraged to contact the United States Attorney's Office regarding their rights to submit statements or appear at the sentencing of Paul Donisthorpe by contacting:

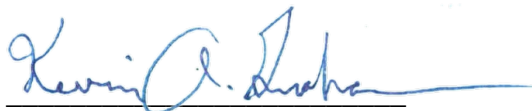
Alyssa Skrepcinski
Victim Advocate
Office of the United States Attorney for the District of New Mexico
(505) 224-1427
201 Third St. NW, Suite 900, Albuquerque NM 87102.

7. Civil Action Filed in Federal Court by Evanston Insurance Company: The Receiver has been made aware of a civil action filed in federal court 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 a declaratory judgment from the court that the company will not be liable for the payment of any claims brought against DSLMM that might have been subject to coverage under the "Errors and Omissions/Employee Dishonesty" policy [Policy # EO865156] purchased by DSLMM. Evanston previously contacted the Receiver proposing to return premium payments (just over \$9,000) that had been received from DSLMM on the policy, in exchange for a stipulation from the Receiver that Evanston would not be liable for any claims brought under the policy. The Receiver declined to accept Evanston's offer. In the Second Amended Complaint filed by Evanston in the case, Evanston has now named the Receiver as a party-defendant to the case. The Receiver will be filing a response to the Evanston petition in the days to come.

8. Notice Received from the Cincinnati Insurance Companies of Intention to Disclaim Liability: The Receiver has been contacted by legal counsel representing the Cincinnati Insurance Companies, and informed of Cincinnati's contention that it has no duty to provide coverage of claims under the "directors and officers" insurance policy the company issued to DSLM. Cincinnati's position, in summary, is that Paul A. Donisthorpe provided false information in the insurance policy application and therefore Cincinnati is not liable for coverage of claims under the policy. The Receiver has informed counsel for Cincinnati that the Receiver does not agree with Cincinnati's position on this matter and that the Receiver contends Cincinnati must provide coverage under the terms of the insurance policy. The Receiver anticipates Cincinnati may pursue legal action similar to that filed by Evanston Insurance Company in an attempt to avoid providing coverage under the Cincinnati policy for DSLM.

On behalf of the Receiver, Christopher Moya, the foregoing is respectfully

submitted by:



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Senior Enforcement Counsel
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10/3/2018

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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10/3/2018
Date