

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 NOVEMBER 2020, MONTHLY REPORT

COME NOW, Christopher Moya, court-appointed Receiver for Desert State Life Management (DSLML), and Rebecca Moore, 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 November 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 DSLM and account balances as October 31, 2020, stood at the following amounts:

DSLML Accounts with New Mexico Bank and Trust:

- | | | | |
|-----|--|---------|--------------|
| (1) | “Operations” account: | XXXX190 | |
| | This account has been closed by the Receiver. | | |
| (2) | “Sweep” account: | XXXX041 | |
| | This account has likewise been closed by the Receiver. | | |
| (3) | “Pooled Savings” account: | XXXX119 | \$596,121.77 |
| (4) | “Trust Cash” account: | XXXX127 | \$2,900.00 |

(5) "Trust Checks" account: XXXX116 \$8,342.23

2. Examination of Records and Accounts:

Due to ongoing conditions of the COVID-19 emergency and the associated work-from-home staffing situation for the FID, scanning of older paper records of DSLM has not progressed in the past month. 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 remaining hardcopy/paper files of DSLM.

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 will be explained in greater detail below, it is the Receiver's belief that there is now a likelihood that some measure of funds will be deposited into client trust accounts for the trusts remaining under the trusteeship of DSLM in the months to come. While the total amount of funds to be distributed to many of the individual special needs trusts accounts is anticipated to be relatively small, the Receiver anticipates a greater potential for finding qualified successor trustees for those trust accounts that have at least some funds therein. Upon identifying appropriate successor trustees for the trusts/accounts to be transferred, the Receiver continues to believe 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 Coverage for DSLM – Status of Litigation: The Receiver is pleased to report that settlement negotiations on October 30, 2020, facilitated by U.S. Magistrate Court Judge Stephen C. Yarborough, resulted in a substantive settlement agreement being reached between multiple parties involved in litigation related to the DSLM matter including, but not limited to, the receivership for DSLM, the plaintiffs in the proposed state class action lawsuit (Case No. D-202-CV-2018-04655; Graham, *et al.* v. Desert State Life Management, *et al.*), Paul Donisthorpe, Evanston Insurance Company, and

Cincinnati Insurance Company. While the full details of the settlement have not yet been finalized by the parties, all deadlines in the three pending federal cases related to DSLM have been stayed. The Receiver anticipates orders staying the pending state court cases will likewise be sought by the parties. The Receiver believes the settlement will ultimately result in a significant amount of funds being made available to help make partial reimbursement to the client trust accounts that suffered losses while under the trusteeship of DSLM. To be clear, the anticipated settlement funds will not be sufficient to fully reimburse the losses suffered by the individual client trust accounts, but it is anticipated by the Receiver that there will be an amount of funds available for distribution amongst all of the accounts that have been shown to have suffered losses. When the final settlement agreement has been reduced to writing and signed by all parties, the Receiver will provide a copy of the settlement to this Court.

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

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. 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 remains hopeful that some funds will be realized from the forfeiture of the assets located in Texas, as well as properties located in New Mexico, to pay restitution 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. 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, and Acting FID Director Rebecca Moore, the foregoing is respectfully submitted by:



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11/4/2020
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:

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*Via counsel for Paul
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4. Spectrum Capital Markets,
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Kevin A. Graham

11/4/2020
Date