

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 SEPTEMBER 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 September 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 September 3, 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	\$265,173.46
(4)	"Trust Cash" account:	XXXX127	\$45,771.12
(5)	"Recovery" account:	XXXX309	\$13,428.23
(6)	"Trust Checks" account:	XXXX116	\$6,973.78

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 is in the process of hiring a law clerk, with both of these employees anticipated to contribute towards progress on receivership 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:

Over fifty (50) trusts continue to be under the trusteeship of the receivership for DSLM where no successor trustees have been identified/recommended by the trust beneficiaries (or representatives of the trust beneficiaries). 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. With the additional attorney coming on board with the FID, the receiver plans to expedite the filing of actions before the court in the above-captioned matter to obtain the necessary hearings and orders to transfer individual trusts to new 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.

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 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. Discovery in this matter has been conducted, including depositions taken on June 25, 2019, of underwriting and claims employees of Evanston, and the deposition of the Receiver, Christopher Moya was taken by Evanston on August 23, 2019. Motions to dismiss this litigation are pending ruling by the Court. Motions for summary judgment have been filed by most parties named in the case, and oral arguments on those motions are scheduled for September 5, 2019. At this time, the case is proceeding toward an anticipated trial date in October 2019.

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

motions to dismiss the case filed by the counsel representing the victims of Paul Donisthorpe, and joined in by the Receiver, are still pending ruling by the Court.

9. Action filed in Probate Court by Andrew Graham against Receiver Moya. On April 10, 2019, an action was filed in the Probate Court of the New Mexico Second Judicial District by Andrew R. Graham. The case is captioned as: Andrew R. Graham v. Chris Moya, Case No. D-202-PB-2019-00212. Andrew Graham, *pro se*, titled his cause of action as “In the Matter of Andrew R. Graham Trust Probate Trust Receivership Dispute.” The plaintiff alleges he is personally owed \$375,000, the purported “value of supplemental needs trust placed in control of Chris Moya, which Andrew Graham is the sole beneficiary.” Counsel for Receiver Moya filed a motion to dismiss the petition on May 9, 2019, which was heard by the Court on August 20, 2019. The motion to dismiss is pending ruling from the Court.

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



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9/04/2019

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:

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Kevin A. Graham

9/04/2019
Date