

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

EVANSTON INSURANCE COMPANY,

Plaintiff,

vs.

No. CIV 18-0654 JB\KK

DESERT STATE LIFE MANAGEMENT;  
CHRISTOPHER MOYA, in his capacity as  
Receiver for the receivership estate of DESERT  
STATE LIFE MANAGEMENT; PAUL A.  
DONISTHORPE; L. HELEN BENNETT;  
LIANE KERR; AYUDANDO GUARDIANS,  
INC., a New Mexico Nonprofit Corporation, on  
behalf of seven protected persons; JOSEPH  
PEREZ; CHRISTINE GALLEGOS,  
individually and as Guardian of VICTOR  
BALDIZAN, an incapacitated adult; SCOTT K.  
ATKINSON, as Guardian Ad Litem for  
VINCENT ESQUIBEL, JR., an Incapacitated  
Person; and CHARLES REYNOLDS, as  
Conservator for J.W., an Incapacitated Person,  
and CAMERON GRAHAM, as trustee for  
ANDREW GRAHAM; ASCENDING HOPE, LLC;  
CNRAG, INC. and DECADES, LLC,

Defendants.

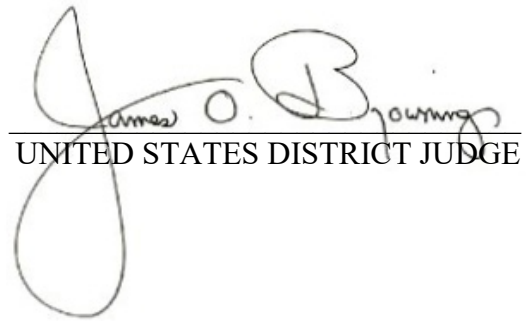
**FINAL JUDGMENT**

**THIS MATTER** comes before the Court on: (i) the Plaintiff's Third Amended Complaint for Rescission and Declaratory Judgment, filed February 15, 2019 (Doc. 44)("Third Amended Complaint"); (ii) the Court's Memorandum Opinion and Order, filed January 16, 2020 (Doc. 174)("Evanston MSJ MOO"); (iii) the Court's Order, filed March 23, 2021 (Doc. 180)("Defendants' MSJ Order"); (iv) the Court's Memorandum Opinion, Findings of Fact, Conclusions of Law, filed September 6, 2020 (Doc. 181)("Trial MOO"); and (v) the Court's Agreed Order, filed October 28, 2021 (Doc. 211)("Agreed Order"). In Plaintiff Evanston

Insurance Company's Third Amended Complaint, Defendant Ayudando Guardians, Inc., is dropped as a party. See Third Amended Complaint at 1. In the Evanston MSJ MOO, the Court held that Evanston Insurance may not rescind its Professional Liability Insurance Policy # EO865156 ("Insurance Policy") for innocent insureds, see Evanston MSJ MOO at 105, and that Evanston Insurance is not entitled to rescission of its Insurance Policy, see Evanston MSJ MOO at 111. In the Defendants' MSJ Order, the Court dismisses Evanston Insurance's claim that Defendant Desert State Life Management's insurance claim does not arise from any wrongful acts within the scope of coverage, see Defendants' MSJ Order at 4; declares that Evanston Insurance is barred from rescinding its contract because of delay in rescinding, see Defendants' MSJ Order at 4-5; and declares that rescission is inappropriate for innocent insureds, see Defendants' MSJ Order at 7. In the Trial MOO, the Court concludes that Defendant Christopher Moya and Helen Bennett are covered under Evanston Insurance's Insurance Policy, but that Defendant Paul Donisthorpe is not. See Trial MOO at 2, 89. In the Agreed Order, the Court declares that Defendant Liane Kerr is not an insured under the Insurance Policy, and therefore is not entitled to coverage or defense under the Insurance Policy. See Agreed Order at 1-2; Plaintiff's Fourth Amended Complaint for Rescission and Declaratory Judgment ¶¶ 60-71, at 12-15, filed September 29, 2021 (Doc. 200)("Fourth Amended Complaint"). Of the two remaining counts in the Fourth Amended Complaint, the Order dismisses Count One, Rescission. See Order at 4-5; Fourth Amended Complaint ¶¶ 46-55, at 10-11. With respect to Count Two, Declaration of No Duty to Defend Or Indemnify Asserted Claims, the Trial MOO holds that the Insurance Policy "does not provide coverage for Donisthorpe," but otherwise dismisses Count Two. Trial MOO at 89. See Fourth Amended Complaint ¶¶ 56-59, at 11-12. Given that there are no more parties, claims, or issues before the Court, the Court enters Final Judgment disposing of this case pursuant to rule

58(a) of the Federal Rules of Civil Procedure.

**IT IS ORDERED** that: (i) judgment is granted for Plaintiff Evanston Insurance Company on Count Three of the Plaintiff's Fourth Amended Complaint for Rescission and Declaratory Judgment, filed September 29, 2021 (Doc. 200), and on Count Two to the extent that the Court holds that the Insurance Policy does not provide coverage for Donisthorpe; (ii) all other counts in the Plaintiff's Fourth Amended Complaint for Rescission and Declaratory Judgment, filed September 29, 2021 (Doc. 200), are dismissed; (iii) this case is dismissed; and (iv) Final Judgment is entered.



James O. Downing  
UNITED STATES DISTRICT JUDGE

*Counsel:*

Ann M. Conway  
Julianna T. Hopper  
Keleher & McLeod, P.A.  
Albuquerque, New Mexico

-- and --

Joseph Borders  
McJessy, Ching & Thompson, LLC  
Chicago, Illinois

*Attorneys for the Plaintiff*

Kevin A. Graham  
Daniel R. Rubin  
New Mexico Regulation and Licensing Department  
Santa Fe, New Mexico

*Attorneys for Defendant Christopher Moya*

Ray M. Vargas, II  
Vargas Law Firm, LLC

Albuquerque, New Mexico

*Attorneys for Defendant Paul A. Donisthorpe*

Maureen Sanders  
Sanders & Westbrook, P.C.  
Albuquerque, New Mexico

*Attorneys for Defendant Helen Bennett*

Paul J. Kennedy  
Kennedy, Hernandez & Associates, P.C.  
Albuquerque, New Mexico

*Attorneys for Defendant Liane Kerr*

Fred J. Federici  
Acting United States Attorney  
Brandon Fyffe  
Assistant United States Attorney  
United States Attorney's Office  
Albuquerque, New Mexico

*Attorneys for the United States of America*

Joseph Goldberg  
H. Jesse Jacobus, III  
Frank T. Davis, Jr.  
Freedman Boyd Hollander Goldberg Urias & Ward P.A.  
Albuquerque, New Mexico

*Attorneys for Defendants Cameron Graham, Joseph Perez, Christine Gallegos, Scott Atkinson, and Charles Reynolds*