

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT

Case Type: Other/Civil

In re:

Assignment for the Benefit of Creditors of
Young America Holdings, LLC

Court File No. 27-CV-20-11191
Hon. Joseph R. Klein

**MEMORANDUM OF LAW IN SUPPORT OF YA ABC, LLC'S
MOTION REGARDING PROCEDURAL ISSUES**

YA ABC, LLC, the assignee in the above-captioned matter (the "Assignee"), submits this Memorandum of Law in support of its Motion for an order of the Court (1) establishing a creditor claims procedure, (2) waiving the requirement that the Assignee post a bond, (3) authorizing the terms of the Assignee's compensation, (4) extending the statutory stay for an additional ninety (90) days to allow the Assignee to conduct its work, and (5) granting such other relief as the Court may deem just and proper.

INTRODUCTION

Young America Holdings, LLC (the, "Assignor") holds 100% membership in Young America, LLC ("Young America"). Until recently, Young America had been engaged in the business of sales promotion and marketing services. Young America provided incentive, loyalty, rebate, sweepstake, and cause marketing programs for Fortune 500 and other companies. Unfortunately, due to the Covid-19 pandemic and other circumstances, Young America became significantly indebted to various persons, corporations, and other entities. Ultimately, proceeds from the sale of Young America's services were insufficient to service its financial obligations and Young America become unable to pay its debts as they became due in the normal course of business. As a consequence, Young America recently was forced to make the difficult decision to

discontinue its business and wind down its affairs. To facilitate a complete discontinuation of its business, the decision was made to also wind down Young America's parent company, the Assignor.

PROCEDURAL BACKGROUND

On September 3, 2020, Assignor executed an assignment for the benefit of creditors (the "Assignment"). The Assignment was filed in Hennepin County District Court pursuant to Minn. Stat. § 577.12. Exhibit A to the Assignment sets out all of the Assignor's non-exempt assets.

The Assignee has committed to liquidate and administer all non-exempt assets of the Assignor for the benefit of the Assignor's creditors, pursuant to the terms of Minnesota Statutes Chapters 576 and 577, and under the supervision of this Court. As required by Minn. Stat. § 577.16, on September 10, 2020, and on September 14, 2020, and September 23, 2020, the Assignee sent a notice of the Assignment to all of the Assignor's known creditors. A copy of the notice is attached as **Exhibit 1**.

Upon the filing of the Assignment, Minn. Stat. § 577.18 provides that the Assignee shall be treated as a general receiver, the assignment property shall be treated as receivership property, and all proceedings following the filing of the Assignment shall be governed by Minn. Stat. §§ 576.21 to 576.53.

At the commencement of an assignment for the benefit of creditors, there are a number of procedural issues that must be addressed. The purpose of the present motion is to request an order of the Court (1) establishing a creditor claims procedure, (2) waiving the requirement that the Assignee post a bond, (3) authorizing the terms of the Assignee's compensation, and (4) extending the statutory stay for an additional ninety (90) days to allow the Assignee to conduct its work. Each of these matters is discussed in detail below.

REQUESTED RELIEF

1. Establishing a Creditor Claims Procedure

Following the filing of an assignment for the benefit of creditors, the assignee is to be treated as a general receiver, and is required to submit to the Court a recommendation concerning a claims process appropriate to the proceeding. *See* Minn. Stat. § 577.18 (incorporating Minn. Stat. § 576.49). Pursuant to Minn. Stat. § 576.49, the Court shall then establish the claims process to be followed in the receivership addressing: (1) whether proofs of claim must be submitted, (2) the form of any proofs of claim, (3) the place where the proofs of claim must be submitted, (4) the deadline or deadlines for submitting the proofs of claim, and (5) other matters bearing on the claims process. *See* Minn. Stat. § 576.49, subd. 2. The Court may authorize proofs of claim to be filed with the receiver/assignee rather than with the Court. *See* Minn. Stat. § 576.49, subd. 3.

Here, the Assignee recommends that the Court issue an order establishing the following claims process:

- a. Creditors shall submit their claims to the Assignee using the proof of claim form B410, available at <https://www.uscourts.gov/forms/bankruptcy-forms>. The Assignee shall also provide a copy of this form along with its notice to creditors to file proofs of claim. Proofs of claim shall be submitted no later than ninety (90) days after the Assignee sends written notice of the claims process to its creditors. The Assignee will plainly indicate the exact date of the claim-filing deadline on such notice. *See* Minn. Stat. Stat. § 576.49. Proofs of claim shall be delivered to Assignee at:

YA ABC, LLC
10 S. LaSalle Street, Suite 3300
Chicago, IL 60603

- b. At any time after expiration of the claim-filing period, and upon thirty (30) days' written notice to the claimant, the Assignee may file a motion objecting to a claim which states the grounds for the objection. *See* Minn. Stat. § 576.50, subd. 1.
- c. At least twenty-one (21) days prior to a proposed distribution to creditors, the Assignee shall file with the Court and serve upon all persons on the master service list, a notice setting out the assets collected and the claims to be paid. Within 21 days after the notice is served, any party in interest may file an objection to a claim or the proposed distribution, stating the grounds for the objection. *See* Minn. Stat. § 576.53, subd. 2.
- d. If there is no objection within twenty-one (21) days after the notice of motion is served, the Court may enter an order authorizing the Assignee to make the distributions described in the distribution schedule without the necessity of a hearing. *See* Minn. Stat. § 576.50, subd. 2.

The Assignee believes that a 90-day claim filing date and the requested proof of claim form are reasonable. *See, e.g.* Fed. R. Bankr. P. 3002(c) (setting a 90 day deadline to file proofs of claim). In addition, this procedure will allow the Assignee to quickly and efficiently administer the assets assigned on behalf of the creditors.

2. Determining the Sum and Conditions of the Assignee Bond

Bonds are generally creatures of statute and are not required in the absence of a statute. *See Griggs, Cooper & Co. v. Lauer's, Inc.*, 264 Minn. 338, 342 (1962). The assignment for the benefit of creditors statute, Minnesota Statutes Chapter 577, does not explicitly require a bond. However, Minn. Stat. § 577.18 provides that an assignee shall be treated as a general receiver, and the general receiver statute, Minn. Stat. § 576.27, provides that a receiver "shall give a bond

in the sum, nature, and with the conditions that the court shall order in its discretion.” *See* Minn. Stat. § 576.27. A receiver’s bond is furnished to ensure the preservation of the property coming into the receiver’s hands and the distribution of the property in accordance with the court’s orders. *Id.*

The Assignee proposes the requirement of a bond be waived in this matter as the Assignor’s assets include only a 100% membership interest in Young America and the Assignee has contemporaneously proposed to post a \$10,000.00 bond in *In re: Assignment for the Benefit of Creditors of Young America, LLC*, Minn. Dist. No. 27-CV-20-11191.

3. Authorizing the Terms of Assignee’s Compensation

All compensation and expenses paid to the Assignee, and to professionals retained by the Assignee, are subject to Court review and approval. *See* Minn. Stat. § 577.18 (incorporating Minn. Stat. § 576.32, subd. 2); *see also* Minn. Gen. R. Prac. 137.09.

The Assignee proposes that, for its work in this matter and the related matter, *In re: Assignment for the Benefit of Creditors of Young America, LLC*, Minn. Dist. No. 27-CV-20-11191, it be authorized to retain, as reasonable compensation, the sum of \$60,000.00 (the "Assignee's Fee"). In addition, the Assignee requests that it be reimbursed for all out-of-pocket expenses, and the fees and costs of its professionals, counsel, accountants, and other professionals, including attorneys’ fees, accountants’ fees, consultant fees, brokerage commissions, and independent contractor charges, that may be employed by the Assignee during the proceedings.

4. Extending the Statutory Stay

The filing of the Assignment with the court administrator acts as a stay, applicable to all persons, that prevents a broad range of legal actions against the assigned property, the Assignee, and the Assignor for up to thirty (30) days after the filing of the assignment with the Court (the

“Statutory Stay”). *See* Minn. Stat. § 577.18 (incorporating Minn. Stat. § 576.42, subds. 3 and 4). The Court may, upon the motion of any party in interest, order that the Statutory Stay be extended beyond the default thirty (30) day period. *See* Minn. Stat. § 576.42, subd. 4(b).

Here, the Assignee requests that the Court extend the Statutory Stay for an additional ninety (90) days, retroactive to October 3, 2020, through January 1, 2021. The Assignment was executed to facilitate the sale of the Assignor’s business assets, liquidate the assignment property, and distribute the proceeds to the Assignor’s creditors without preference or priority, except as established by applicable law. *See* Assignment for the Benefit of Creditors of Young America Holdings, LLC, at ¶¶ 7-8.

In light of the above requested claims procedure, and the other tasks currently in process to sell the business assets and liquidate the assignment property, this Assignment will necessarily continue beyond the scope of the default thirty (30) day Statutory Stay. Without the Statutory Stay, creditors may attempt to obtain or encumber assigned property, take legal action against the Assignor or Assignee, or engage in other enforcement or collection activities in an effort to subvert the designed priority system. *See* Minn. Stat. § 576.51. Such action would frustrate the uniform distribution of the assignment property and require the Assignee to engage in costly litigation, reducing the ultimate return to creditors.

In order to maximize distributions to creditors and to maintain the applicable priority scheme, it is necessary to extend the Statutory Stay for an additional ninety (90) days, retroactive to October 3, 2020, through January 1, 2021, to allow for the conclusion of the sale or liquidation of the assigned property and for claims to be filed. The Assignee further requests that the Court allow it to file an additional motion to extend the Statutory Stay should the events of this proceeding necessitate such an extension.

CONCLUSION

Based on the foregoing, the Assignee respectfully requests and order of Court (1) establishing a creditor claims procedure, (2) waiving the requirement that the Assignee post a bond, (3) authorizing the terms of the Assignee's compensation, (4) extending the statutory stay for an additional ninety (90) days to allow the Assignee to conduct its work, and (5) granting such other relief as the Court may deem just and proper. The Assignee's proposed order is filed contemporaneously with the motion.

Dated: September 23, 2020

STINSON LLP

/s/ Robert T. Kugler
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Counsel for YA ABC, LLC

EXHIBIT 1

September 9, 2020

To the Creditors of:

Young America, LLC,
a Minnesota limited liability company,

and

Young America Holdings, LLC
a Delaware limited liability company.

Dear Sir/Madam:

NOTICE IS HEREBY GIVEN that Young America, LLC, a Minnesota limited liability company, and Young America Holdings, LLC, a Delaware limited liability company (together, the "Assignors"), both with a principal place of business located at 10 South 5th Street, Floor 7, Minneapolis, MN 55402, have each filed an assignment for the benefit of creditors pursuant to Chapter 577 of the Minnesota Statutes.

- Captions and Court File Nos.: In re: Assignment for the Benefit of Creditors of Young America, LLC, Court File No. 27-CV-20-11191; In re: Assignment for the Benefit of Creditors of Young America Holdings, LLC, Court File No. 27-CV-20-11190
- Court Information: Hennepin County District Court, the Honorable Joseph R. Klein presiding
- Time of Assignment: September 3, 2020
- Assignee: YA ABC, LLC, c/o Steven L. Victor, 10 S. LaSalle Street, Suite 3300, Chicago, IL 60603
- Assignee's Attorneys: Stinson LLP, 50 South Sixth Street, Suite 2600, Minneapolis, MN 55402

The Assignee has committed to liquidate and administer all of the non-exempt assets of the Assignors for the benefit of their creditors pursuant to the provisions of Chapters 576 and 577 of the Minnesota Statutes under the supervision of the above-referenced court. All further notices in this matter that are required by statute or the court will be delivered to you via US Mail at the address as identified on the attached creditor service list. Please contact us in writing if your address changes so that subsequent notices may be timely provided to you.

Very truly yours,



Steven L. Victor, Authorized Representative
YA ABC, a Series Limited Liability Company

Enclosures

cc: The Honorable Joseph R. Klein