

JUN 24 2002

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION-FLINT

NATURAL RESOURCES
DIVISION

IN RE:

MITCHELL CORPORATION OF
OWOSSO,

Case No. 00 31977
Chapter 11 proceeding

Debtor.

Honorable Randolph Baxter

**AMENDED CONSENT ORDER GRANTING THE
DEBTOR LEAVE TO SELL REAL ESTATE**

On June 5, 2002, this court entered an Order authorizing the sale of the premises commonly known as 207 River Street, Cadillac, Michigan, pursuant to the terms of the Debtor's Motion to Sell Real Property Free and Clear of Liens and Claims filed on April 12, 2002. Based upon the agreement of the City of Cadillac, the Michigan Department of Environmental Quality and the Debtor, as evidenced by their signatures below,

IT IS ORDERED that the net proceeds of the sale of the River Street property payable to the City of Cadillac in the amount of \$132,100.45 shall be held by the City in an interest bearing escrow account (the "Escrow Fund"). The Escrow Fund shall be held pursuant to the terms of an indemnification agreement between the City and the Debtor relating to the Debtor's obligation under a Consent Decree with the Michigan Department of Environmental Quality to remediate the premises commonly known as 514 Wright Street. Under the terms of a separate order, requiring the Debtor to deposit with the State of Michigan the sum of \$290,000 to be held in the State's Environmental Response Fund, the State of Michigan is undertaking to remediate the premises pursuant to the aforementioned Consent Decree until the \$290,000.00 is exhausted or the property is remediated to residential criteria, whichever occurs first. In the event that those funds deposited with the State are insufficient to remediate the premises, then the City of Cadillac shall pay over to the State's Environmental Response Fund the amount held in escrow under the terms of this Order. The Escrow Fund shall then be used by the State of Michigan to staff, manage and operate the treatment facilities at the 514 Wright Street property to continue the remediation process under the Consent Decree. To the extent that there are any surplus of the Escrow Fund, after the property has been remediated, in the sole discretion of the Department of Environmental Quality, to acceptable criteria, then the surplus shall be paid over to the Debtor. In the event that after the exhaustion of the \$290,000.00 initially held by the State of Michigan in the Environmental Response Fund and the Escrow Fund by the City of Cadillac under this Order, the balance of any remediation expenses shall remain a nondischargeable debt of the Debtor.

JUN 24 2002

UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION-FLINT
NATURAL RESOURCES
DIVISION

IN RE:

MITCHELL CORPORATION OF
OWOSSO,

Debtor.

Case No. 00 31977
Chapter 11 proceeding

Judge: ARTHUR J. SPECTOR

**CONSENT ORDER AUTHORIZING THE DEBTOR TO ENTER
INTO AN AUCTION AGREEMENT WITH CENTURY AUCTION
AND APPRAISAL SERVICE, INC. AND APPROVING THE SALE
OF CERTAIN ASSETS FREE AND CLEAR OF LIENS AND CLAIMS**

This matter was before the court on Monday, April 8, 2002 at 11:00 a.m. for hearings on objections to the Debtor's motion for approval of an auction agreement and for authority to sell real estate free and clear of liens and claims. Those parties filing objections and appearing before the court for a conference in chambers were Wendy Divozzo, McCurdy & Wotila, on behalf of the City of Cadillac, a creditor; Richardo Kilpatrick and John Kapitan, attorneys for the Official Committee of Unsecured Creditors. Also present and appearing was Jonathan Pierce, on behalf of the Michigan Attorney General's Office. The parties represented to the court that they had reached a settlement, and the court noting the concurrence to this Order by their signatures below,

IT IS HEREBY ORDERED AS FOLLOWS:

1. The estate is authorized to sell the following properties:
 - a) 8.9 acres of vacant land, Cadillac, Michigan
 - b) 514 Wright Street, Cadillac, Michigan
 - c) The property owned and operated as the Crystal Lake Marina located on Crystal Lake in Benzie County
 - d) The dealership building and all associated inventory and personal property used in connection with the Crystal Lake Marina located on Honor Highway, Benzie County, Michigan.
 - e) The Betsie Bay Marina.
 - f) 123 N. Chipman Street, Owosso, Michigan.

2. The estate is authorized to engage Century Auction & Appraisal Service, Inc. on the following terms and conditions:

- a) The auctioneer will advance all costs and will be reimbursed those costs advanced at closing.
- b) The marketing campaign will consist of direct mail, print media, articles and advertisements and specialty journals, broadcast media, location signage, telemarketer and personal contacts, in the auctioneer's discretion.
- c) The auctioneer will receive a fee from any buyer, referred to as a buyer's premium, of 4.5% of the purchase price on any real estate and 15% on any personal property.

3. Any successful bid or bidders will sign a real estate/personal property sales contract without contingencies, except the requirement for the receipt of an owner's policy of title insuring marketable title in the successful bidder, and will be required to deposit at the auction a nonrefundable certified check of \$50,000 for any of the properties, except the Cadillac vacant land or the dealership building. With respect to those properties, the deposit shall be \$20,000.

4. The properties may be withdrawn from sale at the election of the debtor or the Official Unsecured Creditors Committee if the gross sales proceeds generated at the auction is less than the following:

- a) 8.9 acres, vacant land, Wright Street, Cadillac - \$65,000.00
- b) Betsie Bay Marina, Frankfort, Michigan - \$750,000.00
- c) The property owned and operated as the Crystal Lake Marina located on Crystal Lake in Benzie County and the dealership building and all associated inventory and personal property used in connection with the Crystal Lake Marina located on Honor Highway - \$475,000.00
- d) 123 N. Chipman, Owosso - \$2,500,000.00
- e) 514 Wright Street plant, Cadillac - None

5. In the event that the debtor or the Official Unsecured Creditors Committee makes the election to withdraw one or more of the parcels listed above from the auction sale, then the auctioneer shall be paid a fee of 1.5% of the highest bid price and a reimbursement of prorated expenses attributable to the property withheld from the sale.

6. From the proceeds of the sale of the Wright Street property, the sum of \$290,000.00 shall be paid to the State of Michigan's Environmental Response Fund to be used to remediate the Wright Street premises under the terms of a Consent Decree entered into between the Debtor and MDEQ regarding the premises. The proceeds will be used as needed until, in the sole discretion of the DEQ, the funds made available through this Order have been exhausted or the property has been remediated. When those funds have been exhausted, the City of Cadillac, which holds approximately \$132,000.00 from the proceeds of the sale of property commonly known as 207 River

Street, Cadillac, Michigan, will be paid over to the DEQ to continue the remediation process. The additional funds paid over by the City of Cadillac shall be used to remediate the premises pursuant to the terms of the Consent Order until exhausted, or the treatment can be closed out, whichever occurs first. Any surplus of funds held by the State in the Environmental Response Fund or by the City of Cadillac as the proceeds of the sale of the River Street property shall be returned to the Debtor. In the event that the total funds available of \$420,000 is inadequate to remediate the property to then criteria in effect by the DEQ for the remediation of water supplies under residential criteria, then the remainder of any costs for remediation shall be the nondischargeable debt of the Debtor. The DEQ will be given an easement to insure ingress, egress and access to the remediation facilities on the Wright Street premises under a deed restriction prohibiting any owner or user of the property from in any way interfering with the facilities used for the response activities under the Consent Decree, or in any way undertaking activities which would exacerbate the contamination associated with the property or adversely affecting ongoing or future response activities.

Any purchaser of the property shall take the property free from any liabilities or obligations under the Consent Decree, and shall have no obligation to manage and operate the treatment facility.

7. With the exception of paragraph 6 above, all proceeds of the sale of specific properties shall be applied first in the payment of any and all expenses of the sale, including the auctioneer's fees and expenses, and all other costs and expenses ordinarily and customarily paid from sales proceeds, including, by way of example, title insurance fees, revenue stamps, recording fees, and the like, then in payment of any and all real property taxes owed. The net proceeds of the sale of the Crystal Lake Marina property, the Betsie Bay Marina property, and 123 N. Chipman Street shall be paid over to Central State Bank in satisfaction of its mortgage, and the balance of the net proceeds of the sale will be paid to the Debtor. The Official Unsecured Creditors Committee has not acknowledged the validity of the mortgages in favor of the insiders of the Debtor. Accordingly, no disbursement from the proceeds of the sale of the property as described in this Order shall be made in satisfaction of these mortgages unless and until the validity, perfection and priority of these mortgages entitling the insider secured claims to a distribution has been determined.

8. The debtor, with the concurrence of the Official Unsecured Creditors Committee, reserves the right to sell any of the above-described properties at private sale prior to the auction, including, by way of example, the property located at 207 River Street, Cadillac, Michigan, which is subject to an outstanding offer to purchase, for a gross sales price of \$140,000 as long as the gross proceeds of the sale are not less than the amounts shown in paragraph 4 above. It is provided, however, that if any of those properties are sold by private sale through the procuring efforts of Century Auction & Appraisal Service, Inc., then Century Auction & Appraisal Services, Inc. shall receive the commission of 4½% plus a prorata reimbursement of all of its direct expenses attributable to the property sold by private sale. It is further provided that if any of the properties are withdrawn from the

sale for any other reason, including a private sale by the debtor to an interested party with whom the debtor has had communications, and where Century was not the procuring cause of the sale, then Century Auction & Appraisal Services, Inc. shall be paid a fee of 1.5% of the gross sales proceeds and a pro rata reimbursement for all of its direct expenses attributable to the property sold by private sale.

9. Any expenses for which the auctioneer seeks reimbursement pursuant to paragraphs 5, 7 or 8 shall be documented and submitted to the Debtor and the Official Unsecured Creditors Committee by facsimile to their respective counsel. If there is no objection to the requested expenses, then the auctioneer may deduct those expenses from the proceeds of sale. If there is an objection within seven (7) days to the allowance of the expenses, then the expenses will be escrowed by the auctioneer and any party may request a hearing on the issue.

10. In view of the geographic distance that prospective purchasers may be from the area of the subject premises, it is further ordered that the auctioneer, in the auctioneer's discretion, may conduct the sale by sealed bid or live auction.

U.S. Bankruptcy Judge

Dated: _____

APPROVED AS TO FORM:

KILPATRICK & ASSOCIATES, P.C.
Attorneys for Official Unsecured
Creditors Committee

By: _____
John P. Kapitan (61901)

MCCURDY & WOTILA
Attorneys for City of Cadillac

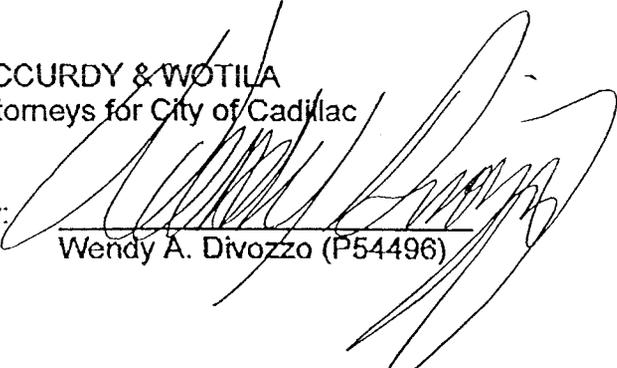
By: _____
Wendy A. Divozzo (P54496)

U.S. Bankruptcy Court Judge

Dated: _____

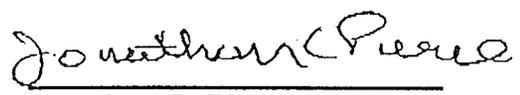
APPROVED AS TO FORM:

MCCURDY & WOTILA
Attorneys for City of Cadillac

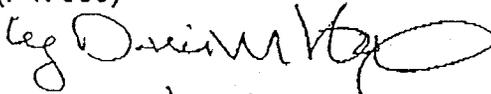
By: 

Wendy A. Divozzo (P54496)

DEPARTMENT OF ATTORNEY GENERAL

By: 

Jonathan C. Pierce (P47339)


6/19/02

Prepared by: Dennis M. Haley (P14538), Winegarden, Haley, Lindholm & Robertson,
P.L.C., G-9460 S. Saginaw Street, Suite A, Grand Blanc, MI 48439 (810) 579-3600