

MEMORANDUM RE NO. 796.

SECURITIES AND EXCHANGE COMMISSION v. UNITED STATES REALTY AND IN-
MENT COMPANY.

I am making the following additions to the opinion which I have circulated to this case:

1. The following footnote will be added at the bottom of page 2:

“²The record shows that counsel for a committee of bondholders interposed objections to the Chapter XI proceeding and proposed to file an involuntary petition under Chapter X. The district judge expressed the opinion that a Chapter X proceeding was preferable, but when the debtor agreed to make an immediate interest payment of one and one-half per cent, for the purpose of dissuading the creditors from filing the Chapter X petition, and when the creditors accepted the offer and dropped the involuntary petition, the judge felt compelled to continue the Chapter XI proceeding.”

2. The last sentence on page 5 will be amended to read as follows:

“The answer turns, not on the court’s statutory jurisdiction to entertain a proceeding under Chapter XI but on consideration growing out of the public policy of the Act found both in its legislative history and in an analysis of its terms, and of the authority of the court clothed with equity powers and sitting in bankruptcy, to give effect to that policy through its power to withhold relief under Chapter XI when relief is available under Chapter X, which is adequate and more consonant with that policy.” (New matter underlined.)

3. The following paragraph will be added at the bottom of page 12:

“While a bankruptcy court cannot, because of its own notions of equitable principles, ‘refuse to award the relief which Congress has accorded the bankrupt’, the real question is, what is the relief which Congress has accorded the bankrupt? In answering it we cannot assume that Congress has disregarded well settled principles of equity, the more so when Congress itself has provided that the relief to be given shall be ‘fair and equitable and feasible’. Good sense and legal tradition alike enjoin that an enactment of Congress dealing with bankruptcy should be read in harmony with the existing system of equity jurisprudence of which it is a part.”

Because of the shortness of time I am circulating these changes in typewritten form.