

1 BERNARD H. MEYERS  
2 GLENDA R. JERMANOVICH  
3 SHAUNA I. MARSHALL  
4 Department of Justice  
5 Antitrust Division  
6 450 Golden Gate Avenue  
7 Room 16216C  
8 Box 36046  
9 San Francisco, CA 94102  
10 Telephone: 415/556-6300

11 UNITED STATES DISTRICT COURT  
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 B.F. GOODRICH COMPANY,

17 Defendant.

18 Civil No. C-78-1785 WAI'

19 STIPULATION

20 Filed: December 15, 1980

21 Entered: March 12, 1981

22 It is stipulated by and between the plaintiff, the United  
23 States of America, and the defendant, B.F. Goodrich Company, by  
24 their respective attorneys, that:

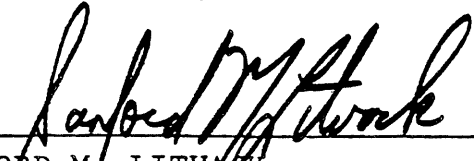
25 1. A Final Judgment in the form hereto attached may be  
26 filed and entered by the Court, upon the motion of either party or  
27 upon the Court's own motion, at any time after compliance with the  
28 requirements of the Antitrust Procedures and Penalties Act  
29 [15 U.S.C. § 16] and without further notice to any party or other  
30 proceedings, provided that plaintiff has not withdrawn its consent,  
31 which it may do at any time before the entry of the proposed Final  
32 Judgment by serving notice thereof on defendant and by filing said  
notice with the Court.

2. In the event plaintiff withdraws its consent or if the  
proposed Final Judgment is not entered pursuant to this  
Stipulation, this Stipulation shall be of no effect whatever and

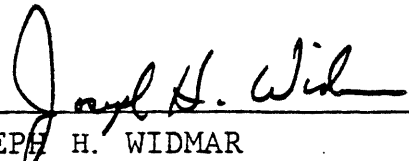
1 the making of this Stipulation shall be without prejudice to  
2 plaintiff and defendant in this or any other proceeding.

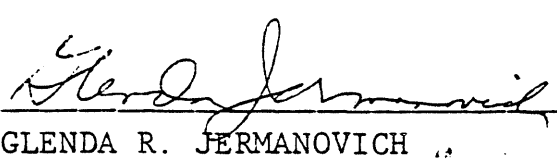
3 DATED: December 15, 1980


4  
5 FOR THE PLAINTIFF:


6   
7  
8 SANFORD M. LITVACK  
9 Assistant Attorney General  
Antitrust Division

10   
11  
12 BERNARD H. MEYERS

13   
14  
15 JOSEPH H. WIDMAR

16   
17  
18 GLENDA R. JERMANOVICH

19   
20  
21 ANTHONY E. DESMOND  
22 Attorneys  
23 Department of Justice

24   
25  
26 SHAUNA I. MARSHALL  
27 Attorneys  
28 Department of Justice

29  
30 FOR DEFENDANT B.F. GOODRICH COMPANY


31 JONES, DAY, REAVIS & POGUE  
32 Attorneys for Defendant B.F. Goodrich Company

By:

  
GERALD W. PALMER, Esq.

and

HAROLD G. MUNTER, Esq.  
Corporate Counsel  
THE B. F. GOODRICH COMPANY

  
HAROLD G. MUNTER, Esq.

1  
2  
3  
4  
5  
6  
7  
8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA, )  
11 Plaintiff, ) Civ. No. C-78-1785-WAI  
12 v. )  
13 B.F. GOODRICH COMPANY, ) FINAL JUDGMENT  
14 Defendant. ) Filed: December 15, 1980  
15 ) Entered: March 12, 1981

16  
17 Plaintiff, the United States of America, having filed its  
18 Complaint herein on August 8, 1978, and defendant, The B.F. Goodrich  
19 Company, having answered the Complaint and having appeared by its  
20 counsel, and both parties by their respective attorneys having  
21 consented to the making and entry of this Final Judgment without  
22 trial or adjudication of any issue of fact or law herein, and  
23 without this Final Judgment constituting evidence against or an  
24 admission by any party consenting hereto with respect to any such  
25 issue:

26 NOW, THEREFORE, before the taking of any testimony and without  
27 trial or adjudication of any issue of fact or law herein, and upon  
28 consent of the parties hereto, it is hereby

29 ORDERED, ADJUDGED AND DECREED, as follows:

30 I.

31 This Court has jurisdiction over the subject matter of this  
32 action and of the parties hereto. The Complaint states claims upon

1 which relief may be granted against the defendant under Section 1  
2 of the Sherman Act (15 U.S.C. § 1).

3 II.

4 As used in this Final Judgment:

5 (A) "Defendant" means defendant The B.F. Goodrich Company;

6 (B) "Person" means any individual, partnership, corporation,  
7 association, firm or any other business or legal entity;

8 (C) "Tires" means tires used on automobiles, recreational  
9 vehicles and/or light trucks, except for those tires actually  
10 delivered to and installed by original equipment manufacturers on  
11 new vehicles;

12 (D) "Dealer" or "tire dealer" shall mean any person who is  
13 in the business of selling tires; and

14 (E) "B.F. Goodrich brand tires" means tires on which appear  
15 the name "B.F. Goodrich," "BFG," "Goodrich," or the B.F. Goodrich  
16 pentagonal, or any other tires sold through the BFG Brand  
17 Replacement Sales organization, or successors thereto.

18 III.

19 (A) This Final Judgment applies to the defendant and to each  
20 of its officers, directors, agents, employees, domestic subsidi-  
21 aries, successors and assigns, and to all other persons in active  
22 concert or participation with any of them who shall have received  
23 actual notice of this Final Judgment by personal service or  
24 otherwise; provided, however, that nothing contained herein shall  
25 apply to any transaction solely between defendant and its officers,  
26 directors, employees, domestic subsidiaries, or any of them when  
27 acting in such capacity.

28 (B) The Defendant shall require, as a condition of the sale  
29 or other disposition of all, or substantially all, of the assets  
30 of the B.F. Goodrich Tire Group (formerly the B.F. Goodrich Tire  
31 Division), or that subdivision of defendant (by whatever name that  
32 subdivision is known) responsible for producing and distributing

1 B.F. Goodrich brand tires, that the acquiring party agree to be  
2 bound by the provisions of this Final Judgment. The acquiring  
3 party shall file with the Court, and serve upon the Plaintiff, its  
4 consent to be bound by this Final Judgment.

5 (C) This Final Judgment shall apply throughout the United  
6 States.

7 IV.

8 Defendant is enjoined and restrained from:

9 (A) entering into, adhering to, maintaining, or enforcing any  
10 contract, agreement, combination or mutual understanding with any  
11 tire dealer:

12 (1) to fix, raise, maintain or stabilize the  
13 price, discount, markup or margin of profit at which  
14 B.F. Goodrich brand tires are sold, or offered for  
15 sale; and/or

16 (2) by which said dealer or defendant is not  
17 to advertise the price of B.F. Goodrich brand tires;

18 (B) encouraging or soliciting any complaints by any tire  
19 dealer regarding the pricing, discounting or price-related advertis-  
20 ing of B.F. Goodrich brand tires by any other tire dealer; or

21 (C) taking any coercive or joint action with respect to any  
22 tire dealer because of any complaint or other communication by any  
23 other tire dealer or wholly-owned B.F. Goodrich tire outlet regard-  
24 ing the pricing, discounting or price-related advertising of  
25 B.F. Goodrich brand tires.

26 V.

27 Defendant is enjoined and restrained from:

28 (A) suggesting or requiring that any tire dealer establish,  
29 adopt, advertise or adhere to any fixed, suggested or specified  
30 price, discount, markup or margin of profit on the sale of any  
31 B.F. Goodrich brand tires; provided, however, that nothing in this  
32 provision shall prohibit the defendant from unilaterally suggesting

1 resale prices, discounts, markups or margins of profit for the sale  
2 of B.F. Goodrich brand tires on the conditions (a) that any such  
3 oral suggestion shall include a statement in substance that each  
4 dealer, and the defendant as well, is free to sell at whatever  
5 prices, discounts, markups or margins of profit such dealer or  
6 the defendant may unilaterally choose; (b) that any such written  
7 suggestion shall include a statement on each page of any such  
8 writing in substance that each dealer, and the defendant as well,  
9 is free to sell at whatever prices, discounts, markups or margins  
10 of profit such dealer or defendant may unilaterally choose; and  
11 (c) that no less frequently than once each year defendant notify  
12 its dealers that notwithstanding any such suggestion, each dealer,  
13 and the defendant as well, is free to sell at whatever prices,  
14 discounts, markups or margins of profit each may unilaterally  
15 choose;

16 (B) suggesting or requiring that any tire dealer not offer  
17 the tire dealer's own guarantee on any B.F. Goodrich brand tire; or

18 (C) coercing or attempting to coerce any tire dealer  
19 to change its price or terms for the sale of B.F. Goodrich  
20 brand tires.

21 VI.

22 Nothing in this Final Judgment shall prohibit defendant from:

23 (A) Proposing to any B.F. Goodrich dealer or prospective  
24 B.F. Goodrich dealer that it join in any joint advertisement to  
25 promote the sale of B.F. Goodrich brand tires, or agreeing with  
26 any such dealer to participate in any such joint advertisement or  
27 publishing or causing to be published any such joint advertisement;  
28 provided, however, that any such actual or proposed joint ad-  
29 vertisement shall include a statement to the effect that any  
30 advertised prices are those offered by defendant and are not  
31 necessarily those offered by participating B.F. Goodrich dealers;

32 / / /

1 (B) Engaging in negotiations or communications with any  
2 person for the purpose of a proposed or actual bona fide sale by  
3 defendant of B.F. Goodrich brand tires; or

4 (C) Formulating or submitting with any B.F. Goodrich dealer  
5 a bona fide joint bid or quotation, made in writing and in response  
6 to a formal invitation, for the sale of B.F. Goodrich brand tires  
7 to any public or private entity where performance of any contract  
8 entered into as a result of that bid or quotation is to be carried  
9 out, in whole or in part, through the sale or delivery of  
10 B.F. Goodrich brand tires by one or more B.F. Goodrich dealers.

11 VII.

12 Defendant is ordered and directed:

13 (A) within 60 days after entry of this Final Judgment to  
14 provide a copy of this Final Judgment to

15 (1) each of defendant's officers and directors  
16 with responsibility for selling, pricing or advertising  
17 B.F. Goodrich brand tires;

18 (2) each of defendant's employees with responsibility  
19 for selling, pricing, or advertising B.F. Goodrich brand  
20 tires to dealers; and

21 (3) each of defendant's employees having managerial  
22 responsibility for selling, pricing or advertising

23 B.F. Goodrich brand tires from B.F. Goodrich retail outlets;  
24 and to obtain and retain for 10 years documents sufficient to show  
25 receipt thereof;

26 (B) for a period of 10 years from the date of entry of this  
27 Final Judgment, to provide a copy of this Final Judgment to each  
28 of its future officers, directors and employees in the positions  
29 described in Paragraph A above and to obtain and retain for 10 years  
30 documents sufficient to show receipt thereof;

31 (C) to file with this Court and serve upon the plaintiff  
32 within 90 days after the date of entry of this Final Judgment an

1 affidavit as to the fact and manner of compliance with subsections  
2 A and D of this Section VII;

3 (D) within 60 days after entry of this Final Judgment to  
4 provide a copy of this Final Judgment to all of defendant's present  
5 dealers, and, within the ensuing four years, to provide a copy of  
6 this Final Judgment to each new franchised dealer;

7 (E) during the period in which this Final Judgment is in  
8 effect, to advise each of its officers and employees in  
9 positions described in paragraph (A) above of its and their  
10 obligations under this Final Judgment. Defendant shall maintain  
11 a program to insure compliance with this Final Judgment, which  
12 program shall include at a minimum the following with respect to  
13 each of such persons:

14 (1) the annual distribution to them of this  
15 Final Judgment;

16 (2) the annual submission to them of a written  
17 directive setting forth the defendant's antitrust  
18 compliance program, with such directive to include

19 (a) an admonition that non-compliance with such  
20 program and this Final Judgment will result in  
21 appropriate disciplinary action determined by the  
22 defendant and which may include dismissal, and

23 (b) advice that the defendant's legal staff is  
24 available at all reasonable times to confer with  
25 such persons regarding any compliance questions or  
26 problems;

27 (3) the imposition of an annual requirement  
28 that each of them sign and submit to the defendant  
29 a certificate in substantially the following form:

30 The undersigned hereby acknowledges that he/she

31 (1) has received a copy of the Final Judgment  
32 and a written directive setting forth the



1 Company policy regarding compliance with the  
2 antitrust laws and with such Final Judgment,  
3 (2) has read and understands such Final Judgment  
4 and directive, (3) has been advised and understands  
5 that non-compliance with such policy and Final  
6 Judgment will result in appropriate disciplinary  
7 measures determined by the Company and which may  
8 include dismissal, and (4) has been advised and  
9 understands that non-compliance with the Final  
10 Judgment may also result in conviction for  
11 contempt of court and imprisonment and/or fine; and  
12 (4) the holding of one or more meetings with them  
13 to review the terms of this Final Judgment and the  
14 obligations it imposes, with such meetings to be  
15 arranged and conducted so that each of them attends at  
16 least one such meeting within approximately each twelve-  
17 month period.

18 VIII.

19 For the purpose of determining or securing compliance with  
20 this Final Judgment, and subject to any legally recognized privilege,  
21 from time to time:

22 (A) duly authorized representatives of the Department of  
23 Justice shall, upon written request of the Attorney General or the  
24 Assistant Attorney General in charge of the Antitrust Division, and  
25 on reasonable notice to defendant made to its principal office, be  
26 permitted:

27 (1) access during the office hours of defendant  
28 to inspect and copy all books, ledgers, accounts,  
29 correspondence, memoranda, and other records and  
30 documents, in the possession or under the control of  
31 defendant, which may have counsel present, relating to  
32 any matters contained in this Final Judgment; and

1 (2) subject to the reasonable convenience of  
2 defendant and without restraint or interference from  
3 it, to interview officers, directors, agents, partners,  
4 members or employees of defendant, who may have counsel  
5 present, regarding any such matters;

6 (B) defendant, upon the written request of the Attorney  
7 General or the Assistant Attorney General in charge of the Antitrust  
8 Division, shall submit such reports in writing, under oath if  
9 requested, with respect to any of the matters contained in this  
10 Final Judgment as may from time to time be requested.

11 No information or documents obtained by the means provided in  
12 this Section VIII shall be divulged by any representative of the  
13 Department of Justice to any person other than a duly authorized  
14 representative of the Executive Branch of the United States, except  
15 in the course of legal proceedings to which the United States is a  
16 party, or for the purpose of securing compliance with this Final  
17 Judgement, or as otherwise permitted by law;

18 (C) if at the time information or documents are furnished by  
19 the defendant to plaintiff, the defendant represents and identifies  
20 in writing the material in any such information or documents to  
21 which a claim for protection may be asserted under Rule 26(c)(7) of  
22 the Federal Rules of Civil Procedure, and the defendant marks each  
23 pertinent page of such material, "Subject to Claim of Protection  
24 under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then  
25 ten (10) days' notice shall be given by plaintiff to the defendant  
26 prior to divulging such material in any legal proceeding (other  
27 than a grand jury proceeding) to which the defendant is not a party.

28 IX.

29 Jurisdiction is retained by this Court for the purpose of  
30 enabling either of the parties to this Final Judgment to apply to  
31 this Court at any time for such further orders or directions as may  
32 be necessary or appropriate for the construction or carrying out of

1 this Final Judgment, for the modification of any of the provisions  
2 hereof, for the enforcement of compliance therewith, and for the  
3 punishment of violation thereof.

4 X.

5 The provisions of this Final Judgment shall be in effect for  
6 a period of not longer than ten (10) years from the date of entry  
7 of this Final Judgment.

8 XI.

9 Entry of this Final Judgment is in the public interest.

10 Dated: March 12, 1981

11  
12 William A. Ingram  
13 UNITED STATES DISTRICT JUDGE  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32