

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

THE B. F. GOODRICH COMPANY
INTERNATIONAL B. F. GOODRICH CORPORATION

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-0375

Decision No. CU-6201

Counsel for claimant:

Raymond J. Elliott, Esq. and
White and Case
By Jeffrey A. Barist, Esq.

Appeal and objections from a Proposed Decision entered May 19, 1971; oral hearing requested

Oral argument October 6, 1971 by Jeffrey A. Barist, Esq.

FINAL DECISION

On May 19, 1971 the Commission entered its Proposed Decision in this matter, certifying losses of claimant, THE B. F. GOODRICH COMPANY, in the total amount of \$2,057,146.90 based on its 40% stock interest in Cia. Gomera Goodrich Cubana, S.A. (Gomera) in the amount of \$1,490,285.65, a debt of Gomera to claimant in the amount of \$536,861.25, and a stock interest in Quimica B. F. Goodrich de Cuba, S.A. (Quimica) in the amount of \$30,000.00.

Upon consideration of the entire record including the new evidence and the argument of counsel, the Commission now finds with regard to Gomera's balance sheet of October 25, 1960 upon which its net worth was based, that the value of the realty and buildings of Gomera were \$1,200,500 and \$950,000 in lieu of \$551,121.32 and \$651,184.63 respectively; and that items listed under "Liabilities and Capital" on this balance sheet under the headings "Dividends Payable" and "Other Liabilities" in the total amount of \$665,804.50 should not be deducted from Gomera's assets in ascertaining its net worth.

Accordingly, the Commission finds that the net worth of Gomera was

\$5,339,712.68 instead of \$3,725,714.13 and that the value of the 40% stock interest of THE B. F. GOODRICH COMPANY was therefore \$2,135,885.07 instead of \$1,490,285.65.

Based on the new evidence the Commission further finds that Gomera's debt to THE B. F. GOODRICH COMPANY was \$602,916.26 instead of \$536,861.25. As to the other items of technical fees due THE B. F. GOODRICH COMPANY for the period October 1, 1960 through December 31, 1962, on which objection was entered, the Commission finds no basis for altering its Proposed Decision.

In view of the foregoing the losses of THE B. F. GOODRICH COMPANY are now summarized as follows:

<u>Item</u>	<u>Value</u>
Gomera Stock	\$2,135,885.07
Debt of Gomera	602,916.26
Quimica Stock	<u>30,000.00</u>
	\$2,768,801.33

The Commission reaffirms the inclusion of interest.

Accordingly, the Certification of Loss to THE B. F. GOODRICH COMPANY, in the Proposed Decision is set aside, the Certification of Loss to THE B. F. GOODRICH COMPANY, as restated below will be entered, and in all other respects the Proposed Decision as amended herein, is affirmed, including the Certification of Loss to INTERNATIONAL B. F. GOODRICH CORPORATION.

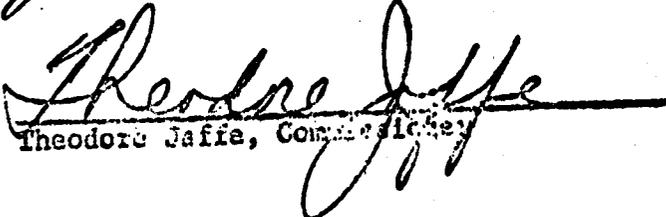
CERTIFICATION OF LOSS

The Commission certifies that THE B. F. GOODRICH COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Million Seven Hundred Sixty-Eight Thousand Eight Hundred One Dollars and Thirty-Three Cents (\$2,768,801.33) with interest thereon at 6% per annum from October 24, 1960 to the date of settlement.

Dated at Washington, D. C.,
and entered as the Final
Decision of the Commission

OCT 20 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

CU-0375

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Counsel for claimant:

Raymond J. Elliott, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by THE B. F. GOODRICH COMPANY in the amended amount of \$3,867,832.51 based upon the asserted losses resulting from certain nationalizations in Cuba. The INTERNATIONAL B. F. GOODRICH CORPORATION, a wholly owned subsidiary organized in Delaware, is joined herein as co-claimant.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States.

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated,

intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

Section 502(1)(B) of the Act defines the term "national of the United States" as a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity.

THE B. F. GOODRICH COMPANY was organized in 1898 under the laws of the State of New York; an officer of the company has certified that at all times pertinent hereto more than 50% of the outstanding stock was owned by nationals of the United States and estimates that as of January 18, 1967 98.3% of them were United States nationals. The Commission holds that THE B. F. GOODRICH COMPANY and its wholly owned subsidiary, INTERNATIONAL B. F. GOODRICH CORPORATION organized in Delaware qualify as nationals of the United States within the meaning of Section 502(1)(B) of the Act.

Claimant describes its losses as follows:

1. Stock interest in Compania Gomera Goodrich Cubana	\$3,005,381.60
2. Drafts	423,658.05
3. Accrued technical fees	151,993.69
4. Future technical fees	242,000.00
5. Accounts receivable	14,799.17
6. Debt of Quimica B. F. Goodrich S.A.	30,000.00
	<u>\$3,867,832.51</u>

I. THE B. F. GOODRICH COMPANY

A. Compania Gomera Goodrich Cubana (Gomera)

The evidence of record shows and the Commission finds that Compania Gomera Goodrich Cubana, S.A., a Cuban corporation, was organized in Cuba in August, 1941 to manufacture and sell various items of rubber and similar materials with the assistance of claimant corporation.

The record contains a copy of a letter from the Havana branch of the First National City Bank of New York, dated July 14, 1960 which states that they had 12,000 Series A shares of Gomera in custody for the B. F. GOODRICH COMPANY represented by two stock certificates copies of which it

enclosed. The record includes these copies. The record further establishes that the outstanding capital stock of Gomera consisted of 12,000 Series A shares and 18,000 Series B shares, both with par value of \$100.00 (The pesos being on a par with the United States dollar).

Based on the foregoing the Commission finds that THE B. F. GOODRICH COMPANY was the owner of 40% of Gomera's outstanding capital stock.

On October 24, 1960 the Government of Cuba published its Resolution #3 (pursuant to Cuban Law 851) listing Cia. Goodrich de Cuba, S.A. as nationalized. The following day the National Institute of Agrarian Reform appointed an administrator therefor. The Commission finds that Gomera was nationalized by the Government of Cuba on October 24, 1960.

Since Gomera was organized under the laws of Cuba, it does not qualify as a corporate "national of the United States" within the meaning of Section 502(1)(B) of the Act, supra. In this type of situation, it has been held that an American stockholder is entitled to file a claim for the value of his ownership interest. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33.)

The Act provides in Section 503(a) that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant". This phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

Claimant has submitted financial statements of Gomera, together with auditor's reports, as of June 30, 1958 and June 30, 1959 which were prepared

by a public accountant in Havana. In addition it has submitted ten-year summaries of sales and income for the years ending June 30, 1950 through June 30, 1959 inclusive, and a special financial report as of October 25, 1960.

Upon consideration of the entire record, the Commission finds that the valuation most appropriate to the property and equitable to the claimant is that shown in the balance sheet of October 25, 1960 which reflects the following:

CURRENT ASSETS

Cash on hand and in banks		\$ 237,226.70	
Treasurer's special account		18,097.50	\$ 255,324.20
Accounts receivable (trade)	\$1,402,457.06		
Notes receivable	27,514.28	\$1,429,971.34	
Accumulated discounts		51,927.20	
		\$1,378,044.14	
Accounts receivable in suspense		24,493.06	
		\$1,402,537.20	
Reserve for bad debts		264,857.67	1,137,679.53
Deposit for payments to foreign countries		\$ 404,320.87	
Other accounts receivable		125,262.31	
Loans to employees		15,861.52	
Deposit for services		5,451.50	
Deposit with the B. F. Goodrich Co.		60,371.81	
Deposit for letters of credit		315,000.00	926,268.01

INVENTORIES

Finished products		\$ 576,185.65	
Goods on consignment		396,565.39	
Goods under mileage contract		66,429.61	
Imported goods		65,786.95	
Work in process		146,010.98	
Goods in transit		107,891.00	
Raw materials		494,177.05	
Supplies and materials		97,640.66	1,950,687.29
			\$4,269,959.03

FIXED ASSETS

Land	\$ 551,121.32		
Work in progress	66,097.36		
Buildings	651,184.63		
Machinery and equipment	1,627,400.37		
Furniture and furnishings	120,951.85		
Transportation equipment	61,269.93	\$3,078,025.46	
Reserve for depreciation - buildings	\$ 358,174.74		
Reserve for depreciation - machinery and equipment	1,198,713.57		
Reserve for depreciation - furniture and furnishings	74,824.77		
Reserve for depreciation - transportation equipment	26,425.83	1,658,138.91	1,419,886.55

DEFERRED CHARGES

Prepaid expenses	\$ 5,988.93		
Prepaid insurance	7,410.77		13,399.70
			\$5,703,245.28

LIABILITIES AND CAPITAL

CURRENT LIABILITIES

Accounts payable (trade)	\$ 41,450.38	
Accounts payable - The B. F. Goodrich Co.	536,861.25	
Other accounts payable	466,154.98	
Accrued salaries and expenses	47.58	\$1,044,514.19
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Accrued vacation as per law	\$ 20,263.61	
Accrued holidays and sickness as per law	11,069.64	31,333.25
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Withheld taxes and contribution to retirement and other funds	\$ 12,716.17	
Reserve for taxes on foreign currency payments	8,163.04	20,879.21
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Dividends payable		390,000.00
Reserve for taxes		215,000.00

OTHER LIABILITIES

Reserve for increased replacement cost of facilities	\$ 150,798.86	
Reserve for contingencies	125,005.64	275,804.50
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		\$1,977,531.15

CAPITAL AND SUPERAVIT

Capital - Shares A	\$1,200,000.00	
Capital - Shares B	1,800,000.00	\$3,000,000.00
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Special reserve	391,772.11	
Net profit for period	333,942.02	3,725,714.13

\$5,703,245.28

This balance sheet indicates that the net worth of Gomera on the date of loss was \$3,725,714.13.

Accordingly, the Commission finds that THE B. F. GOODRICH COMPANY suffered a loss in the amount of \$1,490,285.65, the value of its 40% stock interest on the date of loss. Moreover, the balance sheet reflects that the liabilities include an account payable to THE B. F. GOODRICH COMPANY in the amount of \$536,861.25. In this regard the Commission has held that debts of an intervened or nationalized Cuban corporation owed to an American claimant constitute losses occurring on the date of intervention or nationalization within the meaning of Title V of the Act. (See Claim of Kramer, Marx, Greenlee and Backus, Claim No. CU-0105, 25 FCSC Semiann. Rep. 62 [July-Dec. 1966].)

In view of the above, the Commission finds that THE B. F. GOODRICH COMPANY suffered a loss in the aggregate amount of \$2,027,146.90, the value of its stock interest and the debts owed by Gomera, as a result of the nationalization of Gomera by the Government of Cuba.

B. Technical Fees

With regard to the portion of this claim based on accrued technical fees due THE B. F. GOODRICH COMPANY in the amount of \$151,993.69 it appears from the evidence of record that this debt is included under "Accounts payable - THE B. F. GOODRICH COMPANY" in the balance sheet for which claim has already been allowed as above. Accordingly, this item of the claim as a separate item is denied.

With regard to the portion of this claim based on future technical fees from October 1, 1960 through December 31, 1962, at a time when the Cuban company (Gomera) was owned by the Government of Cuba, there is no evidence that these services were rendered. This item of the claim is therefore also denied.

C. Quimica B. F. Goodrich de Cuba, S.A. (Quimica)

The evidence establishes that Quimica was incorporated in Havana, Cuba, on April 6, 1959 with an authorized capital of 5,000 shares with par value of 100 pesos each, but that only 300 shares had been issued: 295 shares directly to THE B. F. GOODRICH COMPANY and 5 shares issued to a nominee of THE B. F. GOODRICH COMPANY. The purpose of organizing Quimica was to operate a chemical company in Cuba.

The record further establishes that Quimica was in the initial stage of organization, that THE B. F. GOODRICH COMPANY had expended \$2,030.00 in initial organization expenses and had on deposit \$27,970.00, the balance of the purchase price of its 300 shares, in the Quimica account of the Havana branch of the Chase Manhattan Bank as of September 19, 1960.

The Commission finds that Quimica was nationalized by the Government of Cuba on October 24, 1960 also under the same Resolution #3, supra, and that therefore THE B. F. GOODRICH COMPANY suffered an additional loss of \$30,000.00 as a result of the nationalization of Quimica.

II. INTERNATIONAL B. F. GOODRICH CORPORATION

It is asserted that this corporation organized in Delaware had accounts receivable due from customers in Cuba in the aggregate amount of \$14,799.17.

The record contains copies of invoices and other documents which reflect the sale or services to Cuban customers on open accounts. It is asserted that these sums were not received.

The following is a listing of items documented including amounts and dates payments were due:

<u>Customer</u>	<u>Date Due</u>	<u>Amount</u>
Industrial de Calzado, S.A.	June 7, 1960	\$ 3,377.77
Consolidated Railroads of Cuba	November 15, 1959	13.44
	November 30, 1959	197.22
Perez y Cia.	October 13, 1960	2,751.76
Rogelia B. Varas E. Hijas	May 14, 1959	4.84
Azucarera Coliseo, S.A.	November 4, 1960	202.71
Compania Cubana de Aviacion, S.A.	June 12, 1960	1,059.91
Operadura Rometales, S.A.	January 8, 1960	2,703.74
Hershey Sugar Corp.	November 12, 1960	82.14
Industrias Consolidadas de Mantanzas, S.A.	May 26, 1960	1,641.73
Quimica B. F. Goodrich de Cuba	January 26, 1961	2,763.91
	Total	\$14,799.17

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous unreasonable and costly demands upon the customers in Cuba who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that the afore-said sums totalling \$14,799.17 were lost as a result of intervention by the

Government of Cuba, and that in the absence of evidence to the contrary, such losses occurred on the respective maturity dates with regard to unpaid drafts maturing after September 29, 1959. However, with respect to the date of loss as to those goods sold prior to September 29, 1959, the Commission finds that the loss occurred on September 29, 1959, the effective date of Law 568.

The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered as follows:

	<u>FROM</u>	<u>ON</u>
<u>International</u>	September 29, 1959	\$ 4.84
	November 15, 1959	13.44
	November 30, 1959	197.22
	January 8, 1960	2,703.74
	May 26, 1960	1,641.73
	June 7, 1960	3,377.77
	June 12, 1960	1,059.91
	October 13, 1960	2,751.76
	November 4, 1960	202.71
	November 12, 1960	82.14
	January 26, 1961	<u>2,763.91</u>
		\$14,799.17

<u>B. F. Goodrich</u>	October 24, 1960	\$ 2,057,146.90
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Recapitulation

	<u>Item</u>	<u>Value</u>
I. <u>The B.F. Goodrich Co.</u>	Gomera Stock	\$1,490,285.65
	Debt of Gomera	536,861.25
	Quimica Stock	<u>30,000.00</u>
		\$2,057,146.90
II. <u>International B.F. Goodrich Corp.</u>	Accts. Receivable	\$ 14,799.17

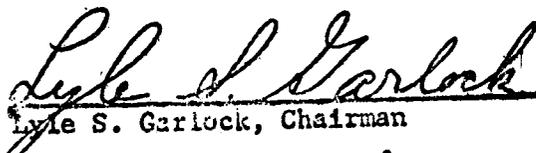
CERTIFICATION OF LOSS

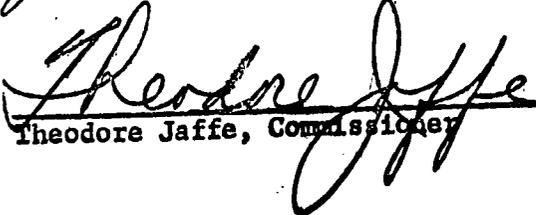
The Commission certifies that THE B. F. GOODRICH COMPANY suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Two Million Fifty-Seven Thousand One Hundred Forty-Six Dollars and Ninety Cents (\$2,057,146.90) with interest at 6% per annum from October 24, 1960 to the date of settlement; and

The Commission certifies that INTERNATIONAL B. F. GOODRICH CORPORATION suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Fourteen Thousand Seven Hundred Ninety-Nine Dollars and Seventeen Cents (\$14,799.17) with interest at 6% per annum from the respective dates of loss to the date of settlement.

Dated at Washington, D.C.,
and entered as the Proposed
Decision of the Commission

MAY 19 1971


Lyle S. Garlock, Chairman


Theodore Jaffe, Commissioner

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended (1970).)

CU-0375