

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

THE B. F. GOODRICH COMPANY
500 South Main Street
Akron, Ohio

Claim No. RUM-30,748

Decision No. RUM-300 (A)

Against the Government of Rumania
Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

Counsel for Claimant:

ROYALL, KOEGEL, HARRIS & CASKEY
100 Broadway
New York 5, New York

FINAL DECISION

The Commission issued its Amended Proposed Decision on this claim on August 13, 1958, a copy of which was duly served upon the claimant. No objections or request for a hearing having been filed within twenty days after such service and general notice of the Amended Proposed Decision having been given by posting for thirty days, it is

ORDERED that such Amended Proposed Decision be and the same is hereby entered as the Final Decision on the claim, the award being restated as follows:

A W A R D

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to THE B. F. GOODRICH COMPANY in the amount of \$31,542.74 plus interest thereon at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, in the amount of \$16,994.13; and it is further

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ORDERED that the award granted therein be certified to the Secretary of the Treasury.

Payment of any part of this award shall not be construed to have divested the claimant herein or the Government of the United States, on its behalf, of any rights against the Government of Rumania, for the unpaid balance of this claim, if any.

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Dated at Washington, D. C.

FEB 2 1959

*Whitney Gilliland
Pearl Rice
Robert L. Kunyig*

COMMISSIONERS

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New York 5, New York

AMENDED PROPOSED DECISION

By Proposed Decision dated December 4, 1957, this claim was denied on the ground that the facts as alleged by claimant do not give rise to a claim which is compensable under Section 303 of the International Claims Settlement Act of 1949, as amended.

Upon consideration of claimant's objections and the evidence and arguments presented at a hearing held on April 24, 1958, the Commission now finds that the nationalization on June 11, 1948 of "Banloc Rubber Manufacturing Company," claimant's debtor, constitutes a taking of claimant's property without compensation within the meaning of Section 303(2) of the Act.

With respect to the amount of the award herein, claimant has contended that any "reasonable method" of estimating its "damage" is proper for the purpose of arriving thereat, and urges that such "damages" be calculated by computing the amounts which could have been due it under its contract with "Banloc Rubber Manufacturing Company," on the basis of a mere conjecture as to the latter's production.

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The Commission holds, however, that such a method of arriving at the amount of claimant's loss is too speculative and finds that the minimum amounts in lieu of royalties provided for in claimant's contract with "Banloc Rubber Manufacturing Company," which accrued prior to June 11, 1948, the date of the latter's nationalization, furnish a sounder basis for computing the compensation due for the loss it suffered by the reason of the nationalization of its debtor.

Accordingly, the Commission finds that the claimant is entitled to an award herein in the amount of One Hundred Sixteen Thousand Five Hundred Forty Two Dollars and Three Cents (\$116,542.03), plus interest thereon at the rate of 6% per annum from June 11, 1948 to August 9, 1955, the effective date of the Act, subject, however, to any right in the claimant to retain the sum of Eighty Eight Thousand Seven Hundred Dollars and Thirty-Four Cents (\$88,700.34) advanced to claimant by the "Banloc Rubber Manufacturing Company" and presently held by claimant in a blocked account. Thus determination of this claim is hereby continued pending resolution of the question of claimant's right to retain the above-mentioned sum of Eighty Eight Thousand Seven Hundred Dollars and Thirty-Four Cents (\$88,700.34).

Dated at Washington, D. C.

AUG 13 1958

FOR THE COMMISSION:

Donald G. Benn WB

Donald G. Benn, Director
Balkan Claims Division otm

Chairman Gilliland voted nay on the question of the issuance of the above-Amended Proposed Decision.

(1) restore or pay compensation for property of nationals of the United States as required by Articles 24 and 25 of the Treaty of Peace with Romania...

(2) pay retroactive compensation for the nationalization of property of nationals of the United States...

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

THE B. F. GOODRICH COMPANY
500 South Main Street
Akron, Ohio

Claim No. RUM-30,748

Decision No. RUM 300

Under the International Claims Settlement
Act of 1949, as amended

GPO 16-72126-1

PROPOSED DECISION

This is a claim against the Government of Rumania under Section 303 of the International Claims Settlement Act of 1949, as amended.

Claimant states that pursuant to an agreement made in 1938 with Banloc Rubber Manufacturing Company of Bucharest, Rumania, claimant agreed to furnish technical services in the manufacture of automotive rubber products in Rumania for a fee based upon a percentage of realized sales, that said agreement was to continue in effect for 15 years, that no payments were received after the first part of 1940, that certain fees due claimant under the said agreement remain unpaid, and that the Banloc Rubber Manufacturing Company was nationalized by the Government of Rumania on June 11, 1948.

Section 303 of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Government of Rumania, among others, arising out of the failure to --

(1) restore or pay compensation for property of nationals of the United States as required by...articles 24 and 25 of the treaty of peace with Rumania...;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of national of the United States in...Rumania; and

(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to...September 1, 1939, in the case of...Rumania, and which became payable prior to September 15, 1947.

The Commission concludes that the facts as alleged do not give rise to a compensable claim under any of the above-quoted provisions.

Clearly, the claim herein does not lie under Section 303(1) of the Act, since it involves no failure on the part of the Government of Rumania to carry out the provisions of article 24 and 25 of the treaty of peace of September 15, 1947.

Since the Banloc Rubber Manufacturing Company was not the property of the claimant, its nationalization by the Rumanian Government was not a taking of the claimant's property. Further, the taking of an entity which was under contractual obligation to the claimant does not amount to a taking of the property of the claimant within the meaning of Section 303(2) of the Act. Examination of Rumanian Nationalization Law Number 119 of June 11, 1948 (Official Gazette Number 133, Bis.) discloses a provision in Chapter II, Article 6, under which liabilities of nationalized enterprises are assumed by the State. Under these circumstances, no property, right, or interest of the claimant can have been taken from him by the nationalization law. He had only the debt, and it remained a valid obligation.

Any subsequent failure of the Government of Rumania to pay amounts due to the claimant under the assumed liability would be a failure to meet a contractual obligation, and would be compensable, if at all, only under the provisions of Section 303(3) of the Act. The claim is found not compensable thereunder, in view of the specific conditions set forth in that section. Originally, as a purely private transaction between the claimant and the Banloc Rubber Manufacturing Company, it involved no obligation of the Government of Rumania and hence no failure of that Government to meet

an obligation. The Government's obligation did not exist prior to June 11, 1948, and therefore could neither have been acquired prior to September 1, 1939 by a national of the United States nor have become payable prior to September 1, 1947.

Accordingly, for the foregoing reasons, the claim is denied. The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

Dated at Washington, D. C.

DEC 4 1957

FOR THE COMMISSION

Donald G. Benn

Donald G. Benn, Director
Balkan Claims Division

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