

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

IN THE MATTER OF THE CLAIM OF

SPERRY RAND CORPORATION

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0278

Decision No. CU 2965

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, for \$500,000.00 was presented by the SPERRY RAND CORPORATION, based upon the nationalization of its wholly owned subsidiary, Remington Rand de Cuba, S.A., by the Government of Cuba.

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)]<sup>7</sup>, 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.

Claimant corporation, by an authorized officer, has certified that the claimant was organized in the State of Delaware and that at all times between the date of loss and presentation of this claim more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The Secretary of THE SPERRY RAND CORPORATION has further certified that as of December 30, 1966 less than 2.5% of its issued and outstanding stock is held by shareholders having registered addresses outside the United States. These stockholders are assumed to be nationals of those respective countries.

The Commission finds on the basis of evidence of record that claimant was the sole shareholder of Remington Rand de Cuba, S.A. a corporation existing under the laws of the Republic of Cuba.

On October 24, 1960, the Government of Cuba published in its Official Gazette Resolution No. 3, which listed as nationalized Remington Rand de Cuba, S.A. Accordingly, the Commission finds that Remington Rand de Cuba, S.A., was nationalized by the Government of Cuba on October 24, 1960.

Based on the foregoing, the Commission finds that claimant sustained a loss of its ownership interest within the meaning of Title V of the Act on October 24, 1960, when Remington Rand de Cuba, S.A. was nationalized and expropriated by the Government of Cuba.

Remington Rand de Cuba, S.A. acted as the representative and distributor for SPERRY RAND CORPORATION and for some of the subsidiaries and affiliates of the SPERRY RAND CORPORATION. Remington Rand de Cuba, S.A. mainly concerned itself with selling and leasing data processing equipment, office equipment, office systems, and electric shavers. Remington Rand de Cuba, S.A. had outstanding and issued 5000 shares with a par value of \$100 each (or 100 pesos).

It is asserted that SPERRY RAND CORPORATION carried the 5000 shares of Remington Rand de Cuba, S.A. on its books at the par value of \$500,000. SPERRY RAND CORPORATION has claimed the "going concern" value of the subsidiary corporation on the date of loss. The claimed amount of \$446,923.34 was arrived at by deducting from the aforementioned \$500,000.00 the amount of \$53,076.66, an amount owed to Remington Rand de Cuba, S.A. by the SPERRY RAND CORPORATION. SPERRY RAND CORPORATION additionally asserts that the going concern value of a subsidiary includes the profits realized by the parent corporation from the sales to the subsidiary.

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." The Commission has concluded that this phraseology does not differ from the international legal

standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider; i. e., fair market value, book value, going concern value, or cost of replacement.

In regard to the financial status of Remington Rand de Cuba, S.A. the record includes Financial Statements for the Year Ended March 31, 1960 and Auditors Report made by an independent firm of accountants and auditors.

The Balance Sheet, in part summarized, appears as follows:

ASSETS

Current Assets

|   |            |                       |
|---|------------|-----------------------|
| Cash  | 96,061.98  |                       |
| Notes and Accounts Receivable   | 452,984.99 |                       |
| Inventory of merchandise  | 336,576.07 |                       |
| Parent and Affiliate Companies<br>(including \$54,052.67 due from<br>SPERRY RAND CORPORATION) | 54,067.80  | 939,690.84            |
| Non-Current Notes Receivable  |            | 29,607.76             |
| Rental Machines   |            | 301,741.59            |
| Investments and Advances  |            | 32,045.16             |
| Fixed Assets  |            | 64,539.75             |
| Deferred Charges  |            | <u>16,208.57</u>      |
|   |            | <u>\$1,383,833.67</u> |

LIABILITIES

Current Liabilities

|                                       |                   |                       |
|---------------------------------------|-------------------|-----------------------|
| Notes Payable to Banks                | 489,089.12        |                       |
| Accounts Payable                      | 23,194.45         |                       |
| Taxes Payable and Accrued<br>Accruals | 58,037.07         |                       |
|                                       | 61,669.93         |                       |
| Affiliate Companies                   |                   |                       |
| Remington Rand America Corp.          | 810,105.48        |                       |
| Others                                | 46,985.26         | 857,090.74            |
| Other Current Liabilities             | <u>12,343.72</u>  | 1,501,425.03          |
| Deferred Income                       |                   | 9,186.82              |
| Capital Stock                         |                   |                       |
| 5000 shares \$100 each par value      | 500,000.00        |                       |
| Deficit                               |                   |                       |
| Per Profit & Loss Statement           | <u>626,778.18</u> | <u>( 126,778.18 )</u> |

\$1,383.833.67

The balance sheet of Remington Rand de Cuba, S.A. enumerates the assets, tangible and intangible, and the liabilities of the enterprise. The liabilities consist of creditors' claims, which are contractual in nature, and those of the owner, which are residual in nature. The excess of assets, if any, over contractual liabilities represents the owners' equity, or net worth. The same result usually may be reached by adding the capital investment, appropriate surplus reserves (not including reserves for depreciation, taxes and the like), and any undivided profit, as appropriate, and subtracting any outstanding deficit. The balance sheet of March 31, 1960 reflects no book value but on the contrary, a deficit of \$126,778.18.

SPERRY RAND CORPORATION has also submitted an uncertified balance sheet which assertedly states the financial condition of Remington Rand de Cuba, S.A. as of September 30, 1960. That balance sheet reflects the following:

|                              |                      |
|------------------------------|----------------------|
| Total Assets                 | \$ 984,890.00        |
| Less Contractual Liabilities | <u>-1,162,039.00</u> |
| Deficit                      | (\$ 177,149.00)      |

It would appear therefore that the Cuban corporation was not only operating at a deficit but that the deficit was increasing. While the claimant did sustain the loss of its proprietary interest it has not established that the interest had any value. Moreover, no evidence has been submitted to establish claimant's contention that the profits of the present corporation provide a basis for finding a value of Remington Rand de Cuba.

Therefore the Commission concludes that claimant corporation, SPERRY RAND CORPORATION, has not sustained a loss based upon net worth of Remington Rand de Cuba. (See the Claim of Goodyear Tire & Rubber Company, FCSC Claim No. CU-0887).

The claim is accordingly, denied.

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

AUG 29 1968

*Leonard v. B. Sullivan*  
Leonard v. B. Sullivan, Chairman

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Frelberg*

Sidney Frelberg, Commissioner

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, 32 Fed. Reg. 412-13 (1967).)

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Counsel for claimant:

Robert C. Sullivan, Esq.

Petition to reopen; Proposed Decision dated and entered August 29, 1968;  
Final Decision entered October 8, 1968.

AMENDED FINAL DECISION

Under date of October 8, 1968, the Commission entered its Final Decision denying this claim because the evidence failed to establish that claimant's wholly owned Cuban subsidiary, Remington Rand de Cuba, S.A. (hereafter called Rand of Cuba), had any value on October 24, 1960, the date the Government of Cuba nationalized Rand of Cuba.

Subsequently, claimant petitioned to reopen the claim on the basis of newly discovered evidence pursuant to the governing regulations of the Commission. (FCSC Reg., 45 C.F.R. §531.5(1)(1970).) The new evidence consists of a copy of a valuation report of Rand of Cuba, prepared in Cuba on November 17, 1960 by A. E. Seymour, claimant's chief executive officer. Appended to the report are copies of detailed supporting schedules and copies of trial balances for Rand of Cuba as of September 30, 1960, apparently prepared after an examination of Rand of Cuba's books and records.

Upon consideration of the newly discovered evidence in light of the entire record, the Commission amends the decision in this matter as follows:

The Commission now finds that on October 24, 1960, the date of loss, the fair market values of Rand of Cuba's assets were as follows:

(2)

|                               |                       |
|-------------------------------|-----------------------|
| Cash                          | \$ 15,126.00          |
| Notes and accounts receivable | 490,476.00            |
| Inventories                   | 519,908.00            |
| Rental machines               | 929,571.00            |
| Physical properties           | 58,944.00             |
| Other assets                  | <u>29,484.00</u>      |
| Total Assets                  | <u>\$2,043,509.00</u> |

According to claimant's letter of December 19, 1967, its records show that it was indebted to Rand of Cuba in the amount of \$53,076.66 on the date of loss. Since this debt could not have been taken by the Government of Cuba, the Commission finds that on the date of loss the aggregate amount of Rand of Cuba's assets was \$1,990,432.34.

The Commission finds that Rand of Cuba's liabilities on the date of loss were as follows:

|                           |                       |
|---------------------------|-----------------------|
| Accounts payable          | \$ 254,118.00         |
| Other accrued liabilities | 73,959.00             |
| Accrued taxes             | 4,995.00              |
| Inter-company debts       | <u>803,528.56*</u>    |
| Total Liabilities         | <u>\$1,136,600.56</u> |

\*The Commission determined in the Claim of Remington Rand America Corporation, Claim No. CU-301, that Rand of Cuba owed this affiliate \$803,528.56 on October 24, 1960, the date of loss, and entered a Certification of Loss in that amount in favor of that claimant.

Accordingly, the Commission finds that the net worth of Rand of Cuba on the date of loss was \$853,831.78, and concludes that claimant sustained a loss in that amount within the meaning of Title V of the Act.

The Commission has decided that in certification 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 respective dates 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.

CU-0278



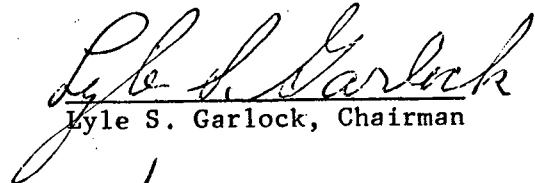
Accordingly, the following Certification of Loss will be entered, and in all other respects the Final Decision of October 8, 1968, as amended herein, is affirmed.

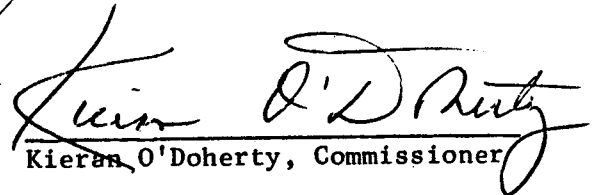
CERTIFICATION OF LOSS

The Commission certifies that SPERRY RAND 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 Eight Hundred Fifty-Three Thousand Eight Hundred Thirty-one Dollars and Seventy-Eight Cents (\$853,831.78) 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 Amended Final Decision of the Commission

JUN 30 1972

  
Kyle S. Garlock, Chairman

  
Kieran O'Doherty, 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.

CU-0278