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

IN THE MATTER OF THE CLAIM OF

FABER, COE & GREGG, INC.

Claim No. CU -3472

Decision No. CU- 3949

Under the International Claims Settlement Act of 1949, as amended

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 FABER, COE & GREGG, INC. in the amount of $18,249.05 based upon the nationalization by the Government of Cuba of its wholly owned subsidiary, Faber, Coe & Gregg, Tobacconist International, Inc.

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.

An officer of the claimant corporation has certified that the claimant was organized under the laws of the State of New York and that at all times between January 1, 1959 and presentation of this claim on May 25, 1967, more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. Claimant states that as of January 1, 1959 the outstanding shares were held by 162 stockholders all of whom were citizens of the United States; and as of May 1, 1967 all of the outstanding shares were held by 143 stockholders all residents of the United States and assumes that substantially all of them were 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 Commission finds on the basis of evidence of record that claimant was the sole shareholder of Faber, Coe & Gregg, Tobacconist International, Inc., a corporation organized under the laws of Cuba, which operated cigar and newstand concessions in public places in Cuba.

On September 6, 1960, the Government of Cuba issued Resolution No. 20053, pursuant to Law No. 647 dated November 24, 1959 which intervened the cigar and newstand concession situated in the Hotel Nacional de Cuba, Havana, Cuba, owned by claimant's wholly owned subsidiary, Faber, Coe & Gregg, International Tobacconist, Inc. Accordingly, the Commission finds that Faber, Coe & Gregg, International Tobacconist, Inc., was intervened by the Government of Cuba on September 6, 1969 within the meaning of Title V of the Act.

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.

The claimant states its loss to be $18,249.05. In support of the statement of loss the claimant has submitted a balance sheet dated June 30, 1960 which reflects the following:

ASSETS		
CURRENT ASSETS		
Cash in Bank (The Trust Co. of Cuba)	$12,752.06	
Cash on Hand (Petty Cash Fund)	1,200.00	
TOTAL CASH	$13,952.06	
ACCOUNTS RECEIVABLE	337.03	
TOTAL CURRENT ASSETS		$14,289.09
Merchandise Inventory (At cost)		3,424,85
Prepaid Insurance		71.18
Furniture and Equipment (Less Amortization)		1,078.32
TOTAL ASSETS		$18,863.44
LIABILITIES AND CAPITAL		
CURRENT LIABILITIES		
Accounts Payable	$ 2,294.17	
TOTAL CURRENT LIABILITIES		$ 2,294.17
CAPITAL AND SURPLUS		
Authorized Capital Stock	$50,000.00	
Stock to be Issued	40,000.00	
ISSUED AND OUTSTANDING (100 Shares at par value $100.00)		$10,000.00
SURPLUS		6,569.27
TOTAL LIABILITIES AND CAPITAL		$18,863.44

On the basis of all the evidence of record, the Commission finds that the value of the assets of Faber, Coe & Gregg, Tobacconist International, Inc. on the date of loss was $18,863.44.

The Commission has consistently held with respect to a claim based on an entity which is not a United States national, the asset loss will be reduced by liabilities. On the basis of the evidence of record, the Commission finds that the company's liabilities at the time of loss were $2,294.17, resulting in a net value of the corporate assets of $16,569.27.

Accordingly, the Commission finds that claimant, FABER, COE & GREGG, INC. sustained a loss in the amlunt of $16,569.27 within the meaning of Title V of the Act as a result of the nationalization of its wholly owned subsidiary in Cuba by the Government of Cuba on September 6, 1960.

The Commission has decided that in certification of losses 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.

CERTIFICATION OF LOSS

The Commission certifies that FABER, COE & GREGG, INC. 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 Sixteen Thousand Five Hundred Sixty-Nine Dollars and Twenty-Seven Cents ($16,569.27) with interest at 6% per annum from September 6, 1960 to the date of settlement.

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

OCT 1 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

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Sidney Freidberg

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