

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

IN THE MATTER OF THE CLAIM OF

MARSDEN ROBERT LEEDER
ROBERT HENRY LEEDER
ROSE GERTRUDE LEEDER OSMAN
MARGERY ELLEN LEEDER CIDAD
GEORGENE LEEDER OSTREICHER

Claim No. CU - 1471

Decision No. CU - 6261

**Under the International Claims Settlement
Act of 1949, as amended**

Counsel for claimants

MARSDEN ROBERT LEEDER,
ROBERT HENRY LEEDER and
ROSE GERTRUDE LEEDER OSMAN:

Asbury Hayne de Yampert, Esq.

Counsel for claimant

MARGERY ELLEN LEEDER CIDAD:

Graham, Carroll, Hodge & Moraitis
By Ross A. Hodge, Esq.

Counsel for claimant

GEORGENE LEEDER OSTREICHER:

Marshall H. Ader, Esq.

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, in the revised amount of \$3,965,736.36 was presented by MARSDEN ROBERT LEEDER, based upon the asserted loss of real estate, stockholder's interests in Cuban corporations and a bank deposit. Subsequently, claimant's children ROBERT HENRY LEEDER, ROSE GERTRUDE LEEDER OSMAN, MARGERY ELLEN LEEDER CIDAD and GEORGENE LEEDER OSTREICHER, having an interest in the subject claim, were joined in the claim. Claimants have been nationals of the United States since birth.

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.

The claim is asserted for the loss of the following properties:

- (1) "Villa Leeder", a farm and old family home, situated at Santa Maria del Rosario, town of Loma de Tierra, Province of Havana;
- (2) 2-story house at No. 1641 Avenida 17-B, Country Club Park, Municipality of Marianao;
- (3) Stock interest in Compania Inmobiliaria y Fiduciaria Matanzas S.A., a land holding company;
- (4) Stock interest in Compania Territorial Kuquine S.A., holder of "Villa Rosita" the new family home at 174th Street, Country Club Park, Municipality of Marianao; and
- (5) a deposit with the Banco Nacional de Cuba.

In support of the claim, evidence has been submitted in the form of deeds for the real properties, affidavits, statements made before the American Embassy in Havana, and other documents.

The validity and value of the various property items will be discussed under separate headings.

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 valuation of nationalized property. It is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider.

(1) "Villa Leeder"

The record shows that in 1957 claimant MARSDEN ROBERT LEEDER inherited from his father Robert Henry Leeder a farm and residence situated on the Central Highway, approximately 10 miles south of Havana, in the town of Loma de Tierra, subdivision Santa Maria del Rosario, Municipality of Guanabacoa, known as "Villa Leeder". The farm consisted of 150 acres of land, barns, farm machinery and equipment; the residence consisted of a main building and an auxiliary house. The record shows that this inherited property passed into the sole ownership of the aforesaid claimant, since the provisions of the community property law of Cuba (infra) are not applicable to inheritances.

In his supplemental affidavit executed April 20, 1971, MARSDEN ROBERT LEEDER requested that the Commission consider all of his property as having been subject to the Cuban community property law which provides that property acquired by one spouse during marriage with funds from the marriage partnership, or by the industry, salary or work of either or both spouses, or from the fruits thereof, is considered jointly owned property of the spouses (see Claim of Robert L. Cheaney and Marjorie Cheaney, Claim No. CU-0915). Claimant also stated that he waives all his rights to a life interest he might have inherited in the property owned by his wife and requested that the Commission adjudicate the wife's share in its entirety to his children who joined in the claim.

The Commission deems that the aforesaid request is in the nature of an assignment executed after the filing of the claim. Section 531.5(k) of the Commission regulations prescribes:

"After the date of filing with the Commission no claim

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shall be amended to reflect the assignment thereof by the claimant to any other person or entity except as otherwise provided by statute."

The Commission is therefore constrained to reject claimant's request and will consider the ownership relations of the claimants as of the time of the original filing. Accordingly, the Commission concludes that upon the death of his father, MARSDEN ROBERT LEEDER became and remained sole owner of the property known as "Villa Leeder".

The record shows that on March 28, 1960 the aforementioned claimant was summoned to the offices of the Institute for Agrarian Reform (INRA) of the Municipality of Guanabacoa and was ordered to surrender the deed for the property. The officials of the Institute explained to him that part of the property was needed for public purposes (a school) and that the premises had already been occupied by agents of the Cuban Government. The Commission, therefore, finds that the farm and residence "Villa Leeder" were taken by the Cuban Government under the provisions of the Agrarian Reform Law on March 28, 1960.

In evaluating this property, the Commission took into consideration claimant's assertion that he intended to set up a suburban settlement on the premises of the farm, inasmuch as the 150 acres became valuable property for building purposes due to the vicinity to the city of Havana and due to the fact that various industrial enterprises had constructed factories in the area near to the farm. In view of the potential for parcellation purposes, the Commission finds that at the time of taking the land measuring 150 acres or approximately 600,000 square meters had a value of \$600,000; and that the improvements consisting of two houses, barns, farm machinery and equipment had a value of \$50,000, for a total of \$650,000.00.

The Commission therefore concludes that claimant MARSDEN ROBERT LEEDER suffered a loss, in connection with the property known as "Villa Leeder" in the amount of \$650,000.00.

(2) No. 1641 Avenida 17-B, Marianao

The record shows that on July 30, 1954, claimant MARSDEN ROBERT LEEDER and his wife Rose Sikora jointly acquired at public auction a plot of land
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of 1,670 square varas with a house thereon, situated at No. 1641 Avenida 17-B, Country Club Park, Marianao, for the sum of \$22,000.00.

Rose Sikora died intestate on June 22, 1958. Under the laws of intestacy of Cuba each of the four children inherited a one-fifth part of her estate, and a one-fourth interest each in the remainder of the one-fifth part of her estate, in which the husband inherited a life estate.

The record shows that this property was taken by the Government of Cuba on November 26, 1963.

Considering the fact that the land of 1,670 square varas or 1,420 square meters in the residential section of the Country Club Park area had a value of \$15,000, the Commission finds that at the time of taking the entire property with improvements, consisting of a small villa was worth \$40,000.00. According to a letter of MARSDEN ROBERT LEEDER, of June 20, 1967, the Cuban Government upon taking title on November 26, 1963 commenced payments to him of \$118.40 per month. These were to continue to 1970, when he states, they would consider the property paid for in full. Mr. Leeder left Cuba on November 13, 1968. It is therefore found that payments were made for 59 months, for a total of \$6,985.60. It is further found that these payments were made to Mr. Leeder on behalf of all the owners.

Section 506 of the Act provides:

In determining the amount of any claim, the Commission shall deduct all amounts the claimant has received from any source on account of the same loss or losses.

In accordance with Section 506 of the Act, \$6,985.60, the amount received on account of the loss of this property must be deducted from the amount of loss sustained by claimants. The Commission finds that claimants are entitled to a certification of loss in the aggregate amount of \$33,014.40.

The value of the life estate and remainder interest must now be determined. According to the evidence of record, at the time of taking MARSDEN ROBERT LEEDER was 68 years of age.

The Commission has adopted as a basis for the valuation of life and remainder interests the Makehamized mortality table, appearing as Table

38 of United States Life Tables and Actuarial Tables 1939-1941, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively (See 23 F.R. 4547, 26 C.F.R. 2031-7). According to that method of valuation, a life estate in property encumbered in favor of a person 68 years old is valued at .29750 of the entire estate, and the remainder estate is valued at .70250 of the entire estate. Therefore the value of the life estate in the present situation is \$3,301.44 times .29750 or \$982.20, and the value of the remainder is \$3,301.44 times .70250 or \$2,319.24 (\$579.81 each child).

Accordingly, claimants suffered the following losses with respect to the property in question:

MARSDEN ROBERT LEEDER	\$16,507.20, plus	\$982.20 or	\$17,489.40
ROBERT HENRY LEEDER	3,301.44, plus	579.81 or	3,381.25
ROSE G.L. OSMAN	3,301.44, plus	579.81 or	3,381.25
MARGERY E. L. CIDAD	3,301.44, plus	579.81 or	3,381.25
GEORGENE L. OSTREICHNER	3,301.44, plus	579.81 or	3,381.25

(3) Compania Inmobiliaria y Fiduciaria Matanzas S.A.

The record shows that Compania Inmobiliaria y Fiduciaria Matanzas S.A. was organized under the laws of Cuba on December 27, 1945, and that this corporation had an authorized capital stock of \$100,000 divided in 1,000 bearer shares, but that only 216 bearer shares were issued.

This corporation, organized under the laws of Cuba, does not qualify as a corporate "national of the United States" defined by Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based his ownership interest therein. (See Claim of Parke, Davis & Company, Claim No. CU-0180, FCSC Ann. Rep. 33.)

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The record further shows that the original owner of 206 bearer shares of stock was the father of MARSDEN ROBERT LEEDER, and that subsequently seven shares of stock were issued to MARSDEN ROBERT LEEDER and three shares to his wife Rose Leeder. Upon the death of his father and wife, MARSDEN ROBERT LEEDER acquired all the outstanding 216 shares of stock, in part through inheritance from his father, and in part by agreement with his children through transfer of the three shares formerly owned by Rose Leeder; these three shares were nominally owned by ROBERT HENRY LEEDER, son of MARSDEN ROBERT LEEDER, but in an affidavit executed July 28, 1969, ROBERT HENRY LEEDER stated that these shares were beneficially owned by his father and only for convenience purposes held by the son. The Commission therefore concludes that upon the death of his father and wife, MARSDEN ROBERT LEEDER owned all outstanding shares of stock of the Matanzas corporation.

The record further shows that this company owned approximately 217 Cuban caballerias (or 72,000 acres) of sugar cane and rice farming land in the vicinity of the town of Itabo, Province of Matanzas, and that the property was commonly known as "Hoyo Colorado" ranch. The land was improved with a commercial center, a service station, cafeteria, office building, living quarters for the farm workers, a new electric rice mill and dryer, warehouses and other structures. The property included a power station for the production of electricity and for irrigation purposes, a number of tractors, trucks, pumps, machinery and equipment, including private roads with bridges linking the various farm units with appropriate communications.

Based upon the evidence of record, the Commission finds that on or about June 30, 1959, the farm was occupied by members of the Cuban revolutionary Army and that shortly thereafter the entire property was expropriated under the provisions of the Cuban Agrarian Reform Law. The Commission, therefore, concludes that this property was taken by the Government of Cuba on June 30, 1959.

Shortly after seizure an attempt was made by the local officials of the Institute for Agrarian Reform of Cuba to appraise the property. The record indicates that the sum of \$2,415,836.36 was tentatively established as its

value; this appraisal, however, was rejected by the higher authorities of the Cuban Government. An inventory made on July 9, 1959 and a statement made by the claimant before the American Embassy in Havana show that claimant placed a value of \$2,288,000 on the assets of the company, including land, buildings, machinery, equipment, harvested sugar cane and rice crops, crops in the warehouses and crops still on the land about to be harvested. The evidence does not indicate that the company had liabilities of any substance, and the Commission therefore finds that the value of the assets was \$2,288,000; accordingly MARSDEN ROBERT LEEDER suffered a loss with respect to his stockholder's interest in the Matanzas company in that amount.

(4) Compania Territorial Kuquine S.A.

The record shows that MARSDEN ROBERT LEEDER and ROBERT HENRY LEEDER were the holders of record of all the outstanding shares of stock of Compania Territorial Kuquine S.A., a Cuban corporation organized in 1941; however, all the shares of stock held by ROBERT HENRY LEEDER were beneficially owned by his father MARSDEN ROBERT LEEDER. Under the community property Law of Cuba Rose Sikora, the wife of MARSDEN ROBERT LEEDER acquired a one-half interest in the aforesaid shares held by her husband. As previously stated, under the Cuban laws of intestacy upon the death of Rose Sikora the four children each inherited a one-fifth part of her estate, and a one-fourth interest in the remainder of the one-fifth of the estate, in which the father inherited a life estate.

It has been established that the property held by the Compania Territorial Kuquine S.A. consisted of land measuring approximately 16,000 square varas, or approximately 13,600 square meters, facing 174th Street between 17-B and 17-C Streets in the Country Club Park section of the Municipality of Marianao, with a large two-story house erected thereon containing two complete apartments, and with a smaller house containing one apartment. There was also a garage for three automobiles, and a large landscaped tropical garden with a swimming pool on the property.

The Commission finds that this property was subject to the provisions of the Urban Reform Law, published in the Official Gazette of October 14,

1960. In the absence of evidence to the contrary, the Commission finds that the assets of the Compania Territorial Kuquine S.A. were taken by the Government of Cuba on October 14, 1960 (see Claim of Henry Lewis Slade, Claim No. CU-0183, 1967 FCSC Ann. Rep. 39).

Claimant MARSDEN ROBERT LEEDER stated before the American Embassy in Havana on May 16, 1960 that this property was worth \$350,000.00. Based upon this statement and upon appraisals of similar properties in the Country Club Park area, of Marianao, Havana, the Commission finds that at the time of loss the land measuring 13,600 square meters was worth \$250,000 and the improvements thereon \$100,000, or together \$350,000.00. There is no evidence of any mortgages encumbering the property, nor of any liabilities owed by the corporation.

At the time of loss of this property, MARSDEN ROBERT LEEDER was 65 years old.

Adopting the same criteria for the valuation of life and remainder estates as above in (2), the Commission finds that a life estate in property of a person 65 years old is valued at .33420 of the entire estate, and the remainder is valued at .66580 of the estate. Therefore the value of the life estate in the present situation is \$11,697.00 (\$35,000 times .33420), and the value of the remainder is \$23,303 (\$35,000 times .66580 or \$5,825.75 for each child).

Accordingly, claimants suffered the following losses with respect to the Kuquine property:

MARSDEN ROBERT LEEDER	\$186,697.00
ROBERT HENRY LEEDER	40,825.75
ROSE C.L. OSMAN	40,825.75
MARGERY E.L. CIDAD	40,825.75
GEORGENE L. OSTREICHER	40,825.75

(5) Bank Deposit

The record shows that MARSDEN ROBERT LEEDER on August 7, 1961 deposited in the Banco Nacional de Cuba \$59,900.00 and that he was the sole owner of this bank account. The Commission finds that this deposit originated pursuant to Law 963, published in the Official Gazette of August 4, 1961 which required that all currency be turned in at certain centers on

August 6 and 7, 1961. By Law 964, published in the Official Gazette on August 9, 1961, it was provided that the owners of the deposits created under Law 963 could draw up to 1,000 pesos, while the balance up to 10,000 pesos remained in so-called "special accounts", and all amounts over 10,000 pesos passed to the State Treasury.

From the data available to the Commission, it is evident that Law 963 was designed to draw funds in circulation into the possession of the Cuban Government, and that the fictional "special accounts" of over \$10,000 created thereby were effectively confiscated by the provisions of Law 964. Therefore, in the absence of evidence to the contrary, the Commission finds that claimant's deposit of \$59,900.00 was taken by the Government of Cuba on August 9, 1961, the date Law 964 took effect. (See Claim of Dorothy G. O'Kieffe, Claim No. CU-1242).

Recapitulation

Summarizing, claimants suffered the following losses within the meaning of Title V of the Act:

MARSDEN ROBERT LEEDER

<u>Property</u>	<u>Date of Loss</u>	<u>Amount of Loss</u>
(1) Villa Leeder	March 28, 1960	\$ 650,000.00
(2) 1641 Avenue 17-B	November 26, 1963	17,489.40
(3) Cia. Inmobiliaria Matanzas	June 30, 1959	2,288,000.00
(4) Cia. Territorial Kuquine	October 14, 1960	186,697.00
(5) Bank account	August 9, 1961	59,900.00
	Total	<u>\$3,202,086.40</u>

ROBERT HENRY LEEDER, ROSE GERTRUDE LEEDER OSMAN,
MARGERY ELLEN LEEDER CIAD, GEORGENE LEEDER OSTREICHER
EACH:

1631 Avenue 17-B	November 26, 1963	\$ 3,881.25
Cia. Territorial Kuquine	October 14, 1960	<u>40,825.75</u>
	Total	<u>\$ 44,707.00</u>

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 from the above recited dates of loss.

CERTIFICATIONS OF LOSS

The Commission certifies that MARSDEN ROBERT LEEDER 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 Three Million Two Hundred Two Thousand Eighty-Six Dollars and Forty Cents (\$3,202,086.40) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that ROBERT HENRY LEEDER 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 Forty-Four Thousand Seven Hundred Seven Dollars (\$44,707.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that ROSE GERTRUDE LEEDER OSMAN 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 Forty-Four Thousand Seven Hundred Seven Dollars (\$44,707.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that MARGERY ELLEN LEEDER CIDAD 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 Forty-Four Thousand Seven Hundred Seven Dollars (\$44,707.00) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement; and

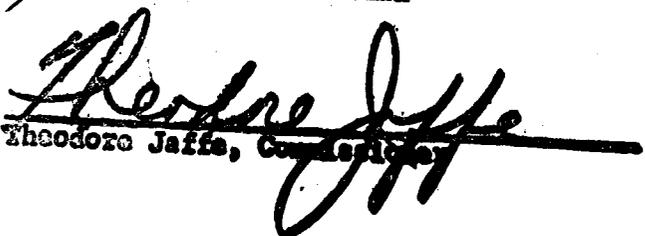
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The Commission certifies that GEORGENE LEEDER OSTREICHER suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Forty-Four Thousand Seven Hundred Seven Dollars (\$44,707.00) with interest thereon 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

JUL 7 1971


Paul 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.

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. 131.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)

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