

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

IN THE MATTER OF THE CLAIM OF

JAMES ARTHUR ALLEN
ROBERT L. ALLEN
DAISY ALLEN GISPERT
VIRGILIO BELTRAN ALLEN
VIOLETA BELTRAN ALLEN
WILFREDO O. ALLEN
SYLVIA ALLEN and
SIXTH HEIR

Claim No. CU -1659

Decision No. CU_6077

**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, in the amended amount of \$1,928,240.00, was presented by JAMES ARTHUR ALLEN on his own behalf, and as attorney-in-fact for certain other claimants herein. JAMES ARTHUR ALLEN, hereafter called ALLEN, is the brother of ROBERT L. ALLEN, WILFREDO O. ALLEN and SYLVIA ALLEN; and is the uncle of DAISY ALLEN GISPERT, VIRGILIO BERTRAN ALLEN and VIOLETA BELTRAN ALLEN, whose mother, Daisy Bell Allen, was ALLEN's sister who died on October 21, 1962. The late Daisy Bell Allen's husband had predeceased her. All of the claimants as well as the deceased have been nationals of the United States since birth. Another party in interest is outside the United States and need not be identified in this decision, but will be referred to as the Sixth Heir. The claim is based on the loss of stock interests in two Cuban corporations.

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 record shows that one Nesbitt Edward Allen had been a national of the United States from birth until his death on February 21, 1944. His wife, Rosa Vives, the mother and grandmother, respectively, of the claimants, who was a United States national since 1892, died on May 13, 1955. It further appears that the property in question, discussed in detail below, had been owned by Nesbitt Edward Allen and Rosa Vives, his wife. Ten children were born of that marriage.

The evidence establishes that four of the said children and their mother assigned their interests to the remaining six heirs. Accordingly, the Commission finds that ALLEN, ROBERT L. ALLEN, WILFREDO O. ALLEN and SYLVIA ALLEN and the SIXTH HEIR, each inherited a one-sixth stock interest in each of the two Cuban corporations; and that DAISY ALLEN GISPERT, VIRGILIO BELTRAN ALLEN and VIOLETA BELTRAN ALLEN jointly inherited a one-sixth stock interest therein. The record includes copies of stock certificates representing the stock interests owned by ALLEN, the stock certificates for the other claimants herein having been left in Cuba.

Claimants assert the following losses:

Arriete Ganadera, S.A.
(Ganadera)

Tangible Assets	\$1,045,740.00	
Goodwill	<u>106,200.00</u>	\$1,151,940.00

Industrial de Canteras Arriete, S.A.
(Industrial)

Tangible Assets	\$ 634,100.00	
Goodwill	<u>142,200.00</u>	<u>776,300.00</u>

Total \$1,928,240.00

Since Ganadera and Industrial were organized under the laws of Cuba, neither one qualifies as a corporate "national of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or 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 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 record shows that both corporations were engaged in farming operations in Las Villas Province, Cuba. In connection with such operations, the corporations owned certain land, buildings, farm machinery and equipment, office and household personalty, and livestock. Ownership of the properties is corroborated by reports from abroad. All of the properties involved had been owned by claimants or their predecessors in interest and eventually were transferred to the two corporations, all of the stock of which was owned by the members of the Allen family in equal parts.

Based upon affidavits from the former mayor of Palmira, Las Villas, and from a person owning property in the same area, who were present at the time, the Commission finds that Ganadera was taken by the Government of Cuba

on December 26, 1960 pursuant to the Agrarian Reform Law. The Commission further finds on the basis of the evidence of record that Industrial was taken by Cuba on January 3, 1961.

Balance sheets, profit and loss statements and other such information concerning the financial conditions of the two corporations are unavailable, all such records having been left in Cuba. Other evidence of record, however, establishes the values of the two corporations on the respective dates of loss.

The evidence includes an affidavit, dated August 25, 1966, from a former official of the Cuban National Institute of Agrarian Reform. It appears that shortly before the actual taking by Cuba, it had been contemplated that Cuba would purchase certain Brahman and Holstein cattle owned by Ganadera. For that purpose a detailed inventory was prepared based upon appraisals and the inventory was signed by the former Cuban official. That inventory had an aggregate value of \$533,640.00.

In addition, other detailed inventories of the respective properties owned by the two corporations were prepared. The valuations shown in those inventories are supported by affidavits from a former president of the National Executive Committee of the Association of Sugar Plantation Owners of Cuba; from a former real estate broker in Cuba; and from a number of other individuals who are also familiar with the properties in question.

Upon consideration of the entire record, the Commission finds that the values of the tangible properties owned by the two corporations on the said dates of loss were as follows:

Ganadera - December 26, 1960

La Esperanza, El Aguacate and El Mamey farms, having an aggregate area of 3.90 caballerias of land (caballeria equals 33.162 acres)	\$ 26,000.00
La Margarita farm, having an area of 3 caballerias	24,000.00

Tres Hermanas farm, having an area of 8.885 caballerias	\$ 66,000.00
El Niagara farm, having an area of 14,215 caballerias and containing complete irrigation system	145,000.00
La Flora farm, having an area of 21 caballerias of sugar cane fields	70,000.00
House at Miramar Heights, Havana, Cuba, having four apartments, situated on 1,000 square meters of land	100,000.00
Two fully equipped offices at Vedado, Havana, Cuba	2,000.00
Various items of farm machinery and equipment, including tractors, grass cutters, dray trucks, plow, mower, and other tools; refrigeration plant equipment, and artesian well	66,400.00
Livestock, including 540 sheep, 140 swine, and 60 horses and mules	12,700.00
Livestock of Brahman and Holstein cattle	<u>533,640.00</u>
Total	<u>\$ 1,045,740.00</u>

Industrial - January 3, 1961

La Gira farm, having an area of 15 caballerias with complete irrigation system	\$ 150,000.00
El Matadero farm where a slaughterhouse was maintained	3,000.00
Various buildings in San Fernando de Camarones, Las Villas, including warehouse, grocery shop with refrigeration plant and other equipment, drug store, manager's house, other houses and related structures	59,500.00
Buildings in Palmira, Las Villas, including the Allen family house, fully furnished, annex to main house, foreman's house and office building	58,000.00
House at 358 Escobar Street, Havana, situated on land having an area of 1,120 square meters	50,000.00
Two-story warehouse, including stables, storerooms, and a mixing and balancing machine	28,000.00
Two-story warehouse for the dairy, including forage space, accommodations for 100 cattle, feeding lines, milk cooler, bottle plant and similar equipment	90,000.00

Various buildings and equipment as well as a quarry with concrete tanks, 2 stone grinders, a 3-story revolving motor-driven sifter, water pump, electric motors, compressor and related equipment, drillers, drill hammers, railroad tracks and tractor, powder magazine house, repair shop, hydraulic press, lathe, and a concrete block manufacturing plant with related equipment	<u>\$ 195,600.00</u>
Total	<u>\$ 634,100.00</u>

The record indicates that Ganadera and Industrial had no liabilities on the respective dates of loss. The Commission thus finds that the net values of Ganadera's and Industrial's tangible assets were \$1,045,740.00 and \$634,100.00, respectively.

Goodwill

Claim is also asserted for goodwill in the amounts of \$106,200.00 and \$142,200.00 for Ganadera and Industrial, respectively. This is computed by ALLEN who contends that on the basis of \$100 as par value of the stock, if anyone were to buy the corporations, he would have to pay for the value of the assets, plus the par value of the stock. No evidence was submitted in support of this portion of the claim.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (1970).)

The Commission finds that claimants have failed to sustain the burden of proof with respect to the portion of their claim based upon goodwill. The record does not establish that Ganadera and Industrial had any goodwill of value on the respective dates of loss. Accordingly, this portion of the claim is denied.

The Commission finds that the net worth of Ganadera on December 26, 1960, the date of loss, was \$1,045,740.00; and that the net worth of Industrial on January 3, 1961, the date of loss, was \$634,100.00.

Claimants' losses within the scope of Title V are summarized as follows:

<u>Item of Property</u>	<u>Date of Loss</u>	<u>Amount</u>
<u>JAMES ARTHUR ALLEN (1/6 Interests)</u>		
Ganadera	December 26, 1960	\$174,290.00
Industrial	January 3, 1961	<u>105,683.34</u>
	Total	<u>\$279,973.34</u>
<u>ROBERT L. ALLEN (1/6 Interests)</u>		
Ganadera	December 26, 1960	\$174,290.00
Industrial	January 3, 1961	<u>105,683.34</u>
	Total	<u>\$279,973.34</u>
<u>DAISY ALLEN GISPERT (1/18 Interests)</u>		
Ganadera	December 26, 1960	\$ 58,096.67
Industrial	January 3, 1961	<u>35,227.78</u>
	Total	<u>\$ 93,324.45</u>
<u>VIRGILIO BELTRAN ALLEN (1/18 Interests)</u>		
Ganadera	December 26, 1960	\$ 58,096.67
Industrial	January 3, 1961	<u>35,227.77</u>
	Total	<u>\$ 93,324.44</u>
<u>VIOLETA BELTRAN ALLEN (1/18 Interests)</u>		
Ganadera	December 26, 1960	\$ 58,096.66
Industrial	January 3, 1961	<u>35,227.78</u>
	Total	<u>\$ 93,324.44</u>
<u>WILFREDO O. ALLEN (1/6 Interests)</u>		
Ganadera	December 26, 1960	\$174,290.00
Industrial	January 3, 1961	<u>105,683.33</u>
	Total	<u>\$279,973.33</u>
<u>SYLVIA ALLEN (1/6 Interests)</u>		
Ganadera	December 26, 1960	\$174,290.00
Industrial	January 3, 1961	<u>105,683.33</u>
	Total	<u>\$279,973.33</u>
<u>SIXTH HEIR (1/6 Interests)</u>		
Ganadera	December 26, 1960	\$174,290.00
Industrial	January 3, 1961	<u>105,683.33</u>
	Total	<u>\$279,973.33</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 as follows:

<u>FROM</u>	<u>ON</u>
<u>JAMES ARTHUR ALLEN</u>	
December 26, 1960	\$174,290.00
January 3, 1961	<u>105,683.34</u>
Total	<u>\$279,973.34</u>
<u>ROBERT L. ALLEN</u>	
December 26, 1960	\$174,290.00
January 3, 1961	<u>105,683.34</u>
Total	<u>\$279,973.34</u>
<u>DAISY ALLEN GISPERT</u>	
December 26, 1960	\$ 58,096.67
January 3, 1961	<u>35,227.78</u>
Total	<u>\$ 93,324.45</u>
<u>VIRGILIO BELTRAN ALLEN</u>	
December 26, 1960	\$ 58,096.67
January 3, 1961	<u>35,227.77</u>
Total	<u>\$ 93,324.44</u>
<u>VIOLETA BELTRAN ALLEN</u>	
December 26, 1960	\$ 58,096.66
January 3, 1961	<u>35,227.78</u>
Total	<u>\$ 93,324.44</u>
<u>WILFREDO O. ALLEN</u>	
December 26, 1960	\$174,290.00
January 3, 1961	<u>105,683.33</u>
Total	<u>\$279,973.33</u>

<u>FROM</u>	<u>ON</u>
<u>SYLVIA ALLEN</u>	
December 26, 1960	\$174,290.00
January 3, 1961	<u>105,683.33</u>
Total	<u>\$279,973.33</u>

<u>SIXTH HEIR</u>	
December 26, 1960	\$174,290.00
January 3, 1961	<u>105,683.33</u>
Total	<u>\$279,973.33</u>

CERTIFICATIONS OF LOSS

The Commission certifies that JAMES ARTHUR ALLEN 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 Hundred Seventy-nine Thousand Nine Hundred Seventy-three Dollars and Thirty-four Cents (\$279,973.34) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that ROBERT L. ALLEN 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 Hundred Seventy-nine Thousand Nine Hundred Seventy-three Dollars and Thirty-four Cents (\$279,973.34) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that DAISY ALLEN GISPERT succeeded to and 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 Ninety-three Thousand Three Hundred Twenty-four Dollars and Forty-five Cents (\$93,324.45) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that VIRGILIO BELTRAN ALLEN succeeded to and 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 Ninety-three Thousand Three Hundred Twenty-four Dollars and Forty-four Cents (\$93,324.44) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that VIOLETA BELTRAN ALLEN succeeded to and 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 Ninety-three Thousand Three Hundred Twenty-four Dollars and Forty-four Cents (\$93,324.44) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that WILFREDO O. ALLEN 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 Hundred Seventy-nine Thousand Nine Hundred Seventy-three Dollars and Thirty-three Cents (\$279,973.33) with interest at 6% per annum from the respective dates of loss to the date of settlement;

The Commission certifies that SYLVIA ALLEN 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 Hundred Seventy-nine Thousand Nine Hundred Seventy-three Dollars and Thirty-three Cents (\$279,973.33) with interest at 6% per annum from the respective dates of loss to the date of settlement; and

The Commission certifies that the SIXTH HEIR 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 Hundred Seventy-nine Thousand Nine Hundred Seventy-three Dollars and Thirty-three Cents (\$279,973.33) 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

FEB 24 1971


J. S. Carlisle, Chairman


Robert J. Hoff, Secretary

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. 531.5(e) and (g), as amended, (1970).)