

U.S. ex Rel. Colunga v. Hercules Inc.

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Opinion

Case No. 89-CV-954 B.

March 6, 1998

31 U.S.C. § 3731(b) is a complex statute setting forth three plateaus of limitation. The first is six years from the date of violation regardless of the knowledge of the relator or the government. The date of violation is the date on which the false claim is presented to the government.³ United States v. Rivera, 55 F.3d 703, 707 (1st Cir. 1995). The statute is a false "claim" statute and the violation is committed when the claim is presented. Smith v. United States, 287 F.2d 299, 304 (5th Cir. 1961). It has been asserted that the

8 "majority of courts" have held that the period begins to run when payment is made." Boese, supra, pp. 5-21 (1988). However, an analysis of the cases cited for the proposition do not completely support the conclusion. The statute is criminal but also with a civil remedy. For the purposes of a criminal prosecution no payment need be made. If the payment date is automatic, then that date would be the date of claim. See discussion, United States ex rel. Kreindler Kreindler v. United Technology, 985 F.2d 1148 (2d. Cir. 1993). This court rejects the contrary conclusion that the date of payment starts the violation. i.e. United States ex rel. Duvall v. Scott Aviation, 733 F. Supp. 159 (W.D.N.Y. 1990).