

UNITED STATES of America, Plaintiff,

v.

**Sydney KLEIN doing business as Standard Real Estate
Company, Eugene Spirer and R. Doyme Halbritter, Defendants.**

Civ. A. No. 18143.

United States District Court W. D. Pennsylvania.

April 2, 1964.

V. LIMITATION OF ACTION

The defendant contends that this action has been barred by the limitation contained in the Act and refers to the words in 31 U.S.C. § 235: "Every such suit shall be commenced within six years from the commission of the act, and not afterward". This provision is not a mere limitation of action. It is jurisdictional in scope. [United States ex rel. Nitkey v. Dawes, C.A.7, 1945, 151 F.2d 639](#); cert. denied [327 U.S. 788, 66 S.Ct. 808, 90 L.Ed. 1015 \(1946\)](#). Accordingly, it must here appear that this action was brought within six years from the commission of the act or acts upon which this action is based.

The question was previously raised by motion to dismiss in this Court and was determined by our late brother, Judge McIlvaine. Judge McIlvaine relied upon [McNinch, supra](#). McNinch involved a credit insurance application. The Supreme Court held there that the mere representation for credit insurance without anything more presented no cause of action under the False Claims Act, since it was not yet a claim against the Government.

It is only when a false claim is made that an actionable right accrues to the Government. [United States v. Tieger, C.A.3, 1956, 234 F.2d 589](#). So then, the false or fictitious representations remain inert unless or until they are activated by the making of a claim. But even then, Section 235 of the Act becomes operative not when payment is first begun to be made on such false claims by the Government, but upon final payment. So that where a gratuity is paid at an earlier date to inaugurate a Veterans Administration loan guarantee, it is the date upon which such guarantee is claimed for payment and finally paid as falsely claimed, which becomes the operative date for limitation of action under Section 235 of the Act.

The statute is therefore tolled until the final payment date of each claim and here includes all losses as payments made by the Veterans Administration up to the time of the final payment. So, too, the time as included in the period in which the Government approved the applications and guaranteed the mortgage loans, would have no significance in themselves under the holding of McNinch. As stated in [United States v. Tieger, supra, 234 F.2d page 591](#): "[T]he conception of a claim against the government normally connotes a demand for money or for some transfer of public property."

Judge McIlvaine in his opinion dated May 26, 1961, at page 7 said:

"Here the alleged false and fraudulent acts were the procuring of the loan applications. However, there were no false claims until the Government had to make payments. The Statute of Limitations begins to run on the date on which the plaintiff first has the right to bring action. [Emich Motors \[Corp.\] v. General Motors Corp., 229 F.2d 714 \[59 A.L.R.2d 159\] \(7th Cir., 1956\)](#). Therefore, until the Government had to pay under its guaranty program, the statute did not begin to run. 'The obtaining of the guaranty of loan was not the making of a claim within the meaning of the Statute.' [U. S. v. McNinch, 242 F.2d 359, 364 \(4th Cir.1957\)](#). See also [U. S. v. Teigh \[Tieger\], 234 F.2d 589 \(3rd Cir.1956\)](#). There was, however, a payment of gratuities more than six years prior to the institution of the suit. However, this while it might have given the United States a right to sue was not the basis of this suit. It is only an element of damages and did not start the Statute of Limitations to run as to bar this suit, and we specifically hold that the Statute of Limitations is not a bar to this suit."