

**UNITED STATES of America, ex rel., and Christopher DUVALL,
Plaintiffs,
v.
SCOTT AVIATION, A DIVISION OF FIGGIE INTERNATIONAL,
INC., Defendant.**

[No. CIV-88-903E.](#)

United States District Court, W.D. New York.

March 28, 1990.

The defendant asserts that the statute of limitations bars plaintiff's claims under the Federal False Claims Act. 31 U.S.C. § 3731 reads in pertinent part:

"(b) A civil action under section 3730 may not be brought—

(1) more than 6 years after the date on which the violation of section 3729 committed, or

(2) more than 3 years after the date when facts material to the right of action are known or reasonably should have been known by the official of the United States charged with responsibility to act in the circumstances, but in no event or more than 10 years after the date on which the violation is committed."

The defendant contends that the period of limitations commences to run when an alleged "false" claim or request for payment is presented by a vendor to the United States for payment, or when there is an approval for payment by the government. See [United States v. Cherokee Implement Company, 216 F.Supp. 374, 375 \(N.D.Iowa 1963\)](#). Duvall however contends, and this Court agrees, that the time of payment by the United States government triggers the statute of limitations under the Act. See [Blusal Meats Inc. v. United States, 638 F.Supp. 824, 829 \(S.D.N.Y.1986\)](#); [United States v. Uzzell, 648 F.Supp. 1362, 1366-68 \(D.D.C.1986\)](#).

The defendant contends that all claims under the 1974 contract are time barred pursuant to the 10-year "drop dead" provision of the statute. It asserts that the last request for payment by the defendant to the Navy under the 1974 contract occurred February 23, 1977. See Affidavit of Shirlee R. Bowden sworn to November 16, 1989, at ¶ 12. However, the time of payment remains a mystery to this Court. Neither the defendant nor Duvall has informed this Court when the last payment under the 1974 contract occurred. It is the payment and not the request which triggers the statute.