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SUPREME COURT
OF THE STATE OF WASHINGTON

Petition from Division III of the Court of Appeals
of the State of Washington
310914-III

COLLEEN KELLY, an individual,

Appellant,

vs.

ALLIANZ LIFE INSURANCE COMPANY OF NORTH
AMERICA, a corporation organized pursuant to the laws of
Minnesota,

Respondent.

RESPONDENT'S ANSWER
OPPOSING PETITION FOR DISCRETIONARY REVIEW

Averil Rothrock, WSBA #24248
David R. Ebel, WSBA #28853
Claire Been, WSBA #42178
Schwabe, Williamson & Wyatt
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711
Attorneys for Respondent
Allianz Life Insurance Company of North America

 ORIGINAL

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I. IDENTITY OF RESPONDENTS

The respondent is Allianz Life Insurance Company of North America (“Allianz”).

II. COURT OF APPEALS DECISION

Allianz defends the Division III published opinion dated December 17, 2013 (hereafter “the Opinion”) (attached). The Court of Appeals correctly applied settled Washington law to affirm the dismissal of Kelly’s untimely complaint pursuant to Civil Rule 56.

III. COUNTER-STATEMENT OF THE CASE

A. **Ms. Kelly learned on June 27, 2005 from the Insurance Commissioner that her 2004 annuities with Allianz allegedly were unauthorized for sale**

In 2004, Ms. Kelly purchased three annuity contracts from Curtis Horton, an Allianz insurance agent. *Opinion 2*. On June 27, 2005, the Washington State Office of Insurance Commissioner informed Ms. Kelly that the annuities were not authorized for sale in Washington. *Id.*

B. **On August 5, 2005 Ms. Kelly demanded rescission from Allianz**

On August 5, 2005, through the Office of the Insurance Commissioner, Ms. Kelly requested that Allianz rescind the policies:

“Ms. Kelly is requesting that the contracts be terminated at their current value, without penalty.” CP 104.

C. Allianz acquiesced to Ms. Kelly’s demand, returning the principal plus 3 percent interest in September 2005

Allianz complied with Ms. Kelly’s request. On September 13, 2005, Allianz communicated by letter to Ms. Kelly that it agreed to rescind the three annuity policies and return her premiums with 3 percent interest. *Id.* With the rescission letter, Allianz enclosed three checks for all of Ms. Kelly’s premium monies and 3 percent interest on the funds for a total amount of \$141,221.69. *Opinion 2.* Rescission of the three policies was complete. Ms. Kelly cashed the checks and the funds cleared. *Id.*

D. Months later Ms. Kelly demanded more money, asserting she was entitled to 12 percent interest, which Allianz denied

Over six months later, on March 20, 2006, Ms. Kelly contacted Allianz, stating that she felt entitled to 12 percent interest on her premiums. *Id.* Evidence submitted by Ms. Kelly about this contact shows that when she later consulted with an attorney, she “was told Allianz should have paid her 12% interest.” CP 94. She

therefore called Allianz “to get additional 9% interest sent to her.”

*Id.*¹

E. Ms. Kelly "sporadically" entreated Allianz to send additional interest of \$14,354 and filed suit August 19, 2011

Over the next several years, Ms. Kelly and her attorney engaged sporadically in discussions with Allianz regarding the added interest Ms. Kelly claimed she was owed. *Opinion 2.*² Ms. Kelly continued to claim that she was entitled to an additional 9 percent interest, in the amount of \$14,354. She offers no grounds or argument to excuse her dilatory conduct in failing to sue during these intervening years, nor does she assert tolling.

¹ The annuities themselves contain no provision for interest upon premature termination. CP 123. The annuities by their terms provided a varying rate of return that depended on future events not known when Ms. Kelly demanded rescission. *Id.* Any purported right to interest upon rescission is not based on a specific contract provision, and Ms. Kelly has never asserted that it is.

² For example, evidence also submitted by Ms. Kelly shows that in December 2008 Ms. Kelly instructed Allianz to communicate with a lawyer she had retained, and Allianz invited her lawyer on December 4, 2008 to “e-mail me back with her concerns and we will open a complaint and respond to you accordingly.” CP 116. Eleven months later in November 2009, not having heard from the lawyer, Allianz emailed him advising that they had never received any response. The first communication from her attorney in pursuit of the additional 9 percent interest arrived seventeen months after that, dated May 9, 2011. CP 123.

F. The trial court summarily dismissed Ms. Kelly's suit as untimely

More than six years after she learned the annuities allegedly were unauthorized for sale and after her demand of rescission, Ms. Kelly filed suit in Spokane County Superior Court on August 19, 2011. *Opinion 3*. Ms. Kelly asserted a cause of action for declaratory judgment and a cause of action for rescission and full restitution. CP 6–8.³ She prayed for judgment of \$14,354,⁴ which represents “that remaining portion of full restitution which Allianz Life has not made.” CP 8, ¶¶ 50, A. Ms. Kelly alleged that RCW 19.52.010 supported her assertion that 12 percent interest was owed as part of the rescission.

Allianz brought a Motion for Summary Judgment raising the statute of limitations. *Opinion 3*. The court granted Allianz's motion and dismissed Plaintiff's stale claims with prejudice. *Opinion 4*.

³ Ms. Kelly originally asserted one cause of action for unpaid interest under RCW 19.52.010. CP 174–178. Allianz filed a Motion to Dismiss Pursuant to CR 12(b)(6). *Opinion 3*. On December 12, 2011, the superior court denied Allianz's motion, but ordered Ms. Kelly to submit an amended complaint making a more definite statement under CR 12(e). *Id.* Ms. Kelly's amended complaint was filed December 19, 2011. *Id.*

⁴ The Opinion states that Ms. Kelly prayed for interest in the amount of \$14,544, but this appears to be a scrivener's error, as the Amended Complaint seeks interest in the amount of \$14,354. CP 8.

G. The Court of Appeals affirmed, holding that Ms. Kelly's suit was time-barred

Ms. Kelly appealed to Division III of the Court of Appeals, challenging the dismissal of her action on summary judgment. The Court of Appeals correctly affirmed the trial court's ruling that Ms. Kelly's claims were time-barred. *Opinion 8.*

In making its determination, the Court of Appeals examined whether the trial court erred in dismissing Ms. Kelly's claims as time-barred under RCW 4.16.040(1), the six-year statute of limitations pertaining to written contracts. *Opinion 4.* Specifically, the Court looked at the accrual date of Ms. Kelly's causes of action.

Ms. Kelly contended that the six-year statute of limitations did not begin to run until September 13, 2005, "when Allianz underpaid her by adding only 3 percent interest to her principal repayment." *Opinion 6.* The Court found that either Ms. Kelly's cause of action accrued upon breach, i.e., the inception of the illegal contract, or, at the latest, when she learned of the illegality on June 27, 2005. Because "the elements for a cause of action on the contract were existent and known to Ms. Kelly" over six years prior to bringing suit, the Court properly upheld the trial court's summary

ruling that her claims were time-barred. *Opinion* 7-8.

IV. ARGUMENT: THIS COURT SHOULD DENY THE PETITION BECAUSE MS. KELLY FAILS TO DEMONSTRATE ANY BASIS FOR REVIEW

Review is unwarranted. The Petition fails to establish any criteria supporting review. This Court should deny the Petition.

This case presents no conflict of Court of Appeals decisions under RAP 13.4(b)(2) and no substantial public interest under RAP 13.4(b)(4), the two grounds for review that Kelly purports to raise in her Petition.⁵ The Court would reach no significant issues in need of clarification by accepting review. The Opinion, moreover, is correctly decided. It relies on RCW 4.16.040(1) and this Court's decision *1000 Virginia Ltd. P'ship v. Vertecs*, 158 Wn.2d 566, 146 P.3d 423 (2006), to affirm summary judgment dismissing Ms. Kelly's tardy lawsuit. Ms. Kelly presents a confused view of justiciability and of proper application of the statute of limitations. Ms. Kelly simply is wrong in her application of controlling law.

⁵ Ms. Kelly cites throughout her Petition to "RAP 13.4(a)(4)," *see Petition* at 5, 6, 11, but Allianz takes this to mean RAP 13.4(b)(4). Ms. Kelly also cites to "RAP 13.4(a)(2)," which Allianz takes to mean RAP 13.4(b)(2). *Petition* at 6, 11.

A. The Opinion Does Not Conflict With Washington Law: Affirmance Was Based on Application of Settled Law and a Correct Understanding of Statutes of Limitations and Justiciability

Ms. Kelly fails to state an issue qualifying for review under RAP 13.4(b)(2). There is no conflict among the appellate courts. The Court of Appeals correctly concluded that the six-year statute of limitations—the most generous that could apply—had expired when Ms. Kelly brought suit. In her Petition Ms. Kelly tortures the justiciability doctrine and sound application of the six-year statute of limitations pursuant to *1000 Virginia Ltd. P'ship* when arguing that her claim should have been found timely.

Allianz cannot discern from the Petition what authority allegedly is in conflict with the Opinion. Ms. Kelly asserts without identifying any authority that “the analysis in the Opinion” “is in conflict with Court of Appeals decisions on the relationship of justiciability and statute [sic] of limitations.” *Petition* 5-6. This is not so. Kelly’s failure to clearly identify the alleged conflict should result in denial.

1. Even if Ms. Kelly is entitled to the benefit of the discovery rule, her claim is time-barred.

Ms. Kelly goes on to argue, contrary to *1000 Virginia Ltd.*

P'ship, that the Court of Appeals should have applied the discovery rule to her claim. *Petition 6-7*. But *1000 Virginia Ltd. P'ships* stands for the opposite: the discovery rule applies to breach of contract claims only in rare circumstances. 158 Wn.2d at 576, 588. Ms. Kelly does not argue that this is one of the rare circumstances recognized by this Court when the discovery rule will apply to a contract claim. It is Ms. Kelly's suggested analysis—not the Court of Appeals' analysis—that is contrary to Washington law.

Moreover, the Court of Appeals *gave* Ms. Kelly the benefit of the discovery rule. Ms. Kelly's claims "most likely" arose immediately upon the 2004 issuance of the annuities she claims were unlawful. *Opinion 6-7*. As the Court of Appeals stated and Ms. Kelly herself admitted, "she had a right to the money from the moment she paid for the illegal investment Annuities." *Opinion 7* citing Appellant's Br. at 10. For purposes of affirmance, however, the Court of Appeals observed that even if the six-year statute of limitations only ran upon discovery of the illegality, *i.e.*, after she was put on notice in June 2005 by the Insurance Commissioner that the annuities were unauthorized, her suit *still* was untimely. *Opinion*

7-8. She failed to sue within six years of learning of the illegality.

Id.

Ms. Kelly has no cause to complain because the Court of Appeals analyzed her claim giving her the benefit of the discovery rule. Even if the discovery rule properly applied in this case, which it does not, the lawsuit was tardy.

2. The doctrine of justiciability does not affect the accrual date of Ms. Kelly's claim.

Ms. Kelly next argues that even if she knew in June 2005 that she had a right to sue Allianz for rescission, her claim was not “justiciable” until Allianz later paid her an amount that she deemed inadequate. *Petition* 7-8. She states: “Prior to September 13, 2005, Ms. Kelly could have had no actual dispute with Allianz regarding the amount of interest to be paid on her principal amounts.” *Petition* 8. She asserts that she could not have sued until Allianz “underpaid” the interest “to which she was entitled.” *Id.* This argument simply is wrong. Ms. Kelly could have sued earlier. She misapplies the doctrine of justiciability in a misguided attempt to extend her time to sue.

Ms. Kelly could have demanded and sued for 12 percent

interest as part of her rescission claim that arose immediately in 2004 or, at the latest, in June 2005. *Opinion 7* (citing *Noel v. Cole*, 98 Wn.2d 375, 383, 655 P.2d 245 (1982)). That she failed to demand 12 percent interest in June 2005, and that Allianz did not extend 12 percent interest in September 2005, neither delays accrual nor extends the statutory limitation period.

The fact that the parties did not discuss the interest component of Ms. Kelly's claim does not establish lack of a justiciable controversy. The law contains no requirement that parties articulate all aspects of their claim or positions to each other in order for a justiciable dispute to exist. Ms. Kelly's citations⁶ do not support her position on justiciability. The Court of Appeals correctly observed: "It is the fact of damage, not the amount, that is critical in determining when her claim accrued." *Opinion 8*. See also *1000 Virginia Ltd. P'ship*, 158 Wn.2d at 578 (citing *Taylor v. Puget*

⁶ *Petition, 7*, citing *Thompson v. Wilson*, 142 Wn. App. 803, 818, 175 P.3d 1149 (2008); *Erickson v. Chase*, 156 Wn. App. 151, 157, 231 P.3d 1261 (2010) ("[t]he statute of limitations does not necessarily begin running from the date of the written agreement. It begins running when the cause of action accrues, meaning when a party has the right to apply to the court for relief.") (citations omitted).

Sound Power & Light Co., 64 Wn.2d 534, 538, 392 P.2d 802 (1964) (“Running of the statute of limitations against the breach of contract . . . is not postponed by the fact that the actual or substantial damages did not occur until a later date.”). *See also Hornback v. Wentworth*, 132 Wn. App. 504, 132 P.3d 778 (2006).

Merely because the parties did not discuss interest does not mean that prior to September 13, 2005 the parties *could not have* disputed the rate or that Ms. Kelly could not have sued for whatever rate she felt was proper. To the contrary, as already noted, Ms. Kelly herself states that “she had a right to the money from the moment she paid for the illegal investment Annuities” *Opinion 7*, citing Appellant’s Br. at 10. *See also* CP 4 (Kelly alleges: “In conjunction with rescission of the written Annuities, Allianz Life was under a duty to make full restitution to Ms. Kelly including the initial premiums along with interest thereon.”); *Petition 1* (asserting a claim “sounding in contractual rescission and arising out of a written contract.”). Ms. Kelly could have brought a lawsuit for rescission claiming 12 percent interest prior to September 13, 2005. Nothing that occurred on September 13, 2005, including the payment from

Allianz, changes this. The interest element of her rescission claim does not have a separate accrual date.

The doctrine of justiciability has no ramifications for the trial court's dismissal of Ms. Kelly's claim, which was straightforward and correct. Because "the elements for a cause of action on the contract were existent and known to Ms. Kelly" over six years prior to bringing suit, the Court of Appeals properly upheld the trial court's summary ruling that her claims were time-barred. *Opinion 7-8*. No Washington law supports a contrary analysis or result.

Ms. Kelly's view of justiciability and accrual is unsupported by the law and the facts. The Court of Appeals was not misled by Ms. Kelly's incorrect analysis. Neither should this Court be.

B. The Petition Fails to Raise a Question of Substantial Public Interest.

Ms. Kelly spends scant time addressing how her case implicates a substantial public interest justifying review under RAP 13.4(b)(4). At most, Ms. Kelly seeks error correction of the application of the law to the facts of her case, which is not this Court's role. And, Allianz already has explained why the Opinion relied on the correct law and correctly applied it to the facts. Public

policy considerations “inherent in a statute of limitations analysis” already are well-defined.

Acceptance of review would not contribute significant development of Washington law nor benefit the greater public.

V. CONCLUSION

Ms. Kelly has failed to present an adequate basis for review by this Court. No conflict of decisions exists. No issue of substantial public interest would be resolved through further review.

This Court should deny review.

DATED this 5th day of February, 2014.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 

Averil Rothrock, WSBA #24248

arothrock@schwabe.com

David R. Ebel, WSBA #28853

debel@schwabe.com

Claire L. Been, WSBA #42178

cbeen@schwabe.com

*Attorneys for Respondent Allianz Life Insurance
Company of North America*

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WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

COLLEEN KELLY, an individual,)	No. 31091-4-III
)	
Appellant,)	
)	
v.)	PUBLISHED OPINION
)	
ALLIANZ LIFE INSURANCE)	
COMPANY OF NORTH AMERICA, a)	
corporation organized pursuant to the laws)	
of Minnesota,)	
)	
Respondent.)	

KULIK, J. — Colleen Kelly appeals summary judgment dismissal of her lawsuit against Allianz Life Insurance Company. She contends the trial court erred in deciding her claims were time barred under the six-year statute of limitations applicable to contract based claims. Ms. Kelly additionally contends that she was entitled to 12 percent interest on the principal repayment rather than the 3 percent interest Allianz paid her when it returned her investment. We review a challenge to the statute of limitations de novo. Here, we agree that Ms. Kelly's action is time barred because she did not file within the six-year statute of limitations, which began to run on June 27, 2005, if not earlier when

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she purchased the annuities in 2004. Ms. Kelly filed her lawsuit on August 19, 2011.

We affirm the trial court's summary judgment dismissal.

FACTS

In 2004, Colleen Kelly purchased three annuity contracts from Curtis Horton, an Allianz Life Insurance Company insurance agent. On June 27, 2005, the Washington State Office of Insurance Commissioner informed Ms. Kelly that the annuities were not authorized for sale in Washington State. On August 5, 2005, Ms. Kelly then requested that Allianz terminate the contracts "at their current value, without penalty." Clerk's Papers (CP) at 104. She did not mention interest.

On September 13, 2005, Allianz notified Ms. Kelly that it agreed to cancel the three policies and return the premiums with 3 percent interest. With the cancellation letter, it included three checks for the premium money, plus 3 percent interest, for a total of \$141,221.69. Ms. Kelly deposited the checks in her bank account and the funds cleared.

On March 20, 2006, Ms. Kelly contacted Allianz, stating that an attorney had advised her that she should have received a refund based on a 12 percent rate of interest. Over the next several years, Ms. Kelly and her attorney sporadically discussed the added interest Ms. Kelly claimed she was owed.

Ms. Kelly filed a lawsuit against Allianz on August 19, 2011, asserting a cause of action for unpaid interest in the amount of \$14,544 under RCW 19.52.010.¹ Allianz filed a CR 12(b)(6) motion to dismiss, arguing that Ms. Kelly failed to allege any cause of action. The trial court denied the motion, but ordered Ms. Kelly to submit an amended complaint making a more definite statement under CR 12(e).

Ms. Kelly filed an amended complaint on December 19, 2011, asking for a declaratory judgment and asserting causes of action for rescission and restitution. She claimed that a 12 percent interest rate under RCW 19.52.010 applied to her restitution claim and asked for a judgment of \$14,354, which represented the “remaining portion of full restitution which Allianz Life has not made.” CP at 8.

Allianz moved for summary judgment, arguing that Ms. Kelly’s causes of action were barred by the six-year statute of limitations for actions on contracts under RCW 4.16.040. Allianz also argued that even if Ms. Kelly’s claims were not time barred, RCW 19.52.010 was inapplicable because the statute does not apply to private agreements between parties where those parties do not seek judicial relief. It also argued if Ms. Kelly’s claims arose out of the rescission of the annuities, Allianz had properly

¹ RCW 19.52.010 states in relevant part: “(1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties.”

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paid 3 percent interest, as agreed to by the parties. Allianz pointed out that RCW 19.52.010 applies only where no different rate is agreed to in writing by the parties.

Ms. Kelly responded that she was entitled to 12 percent interest because, upon rescission of the contracts, she had a common law right to restitution under RCW 19.52.010. She argued, "Allianz rescinded the Annuities, but its fulfillment of its rescission duties are not complete, and proper restitution including the proper applicable interest has yet to be made to Ms. Kelly." CP at 151. She also argued that her claims were not barred by the statute of limitations because her claim did not accrue until September 13, 2005, when Allianz paid 3 percent interest, rather than the statutory 12 percent.

The trial court granted Allianz's motion for summary judgment, ruling that Ms. Kelly's claims were time barred. It rejected Ms. Kelly's argument regarding the accrual date, stating: "I disagree that it's—that in this particular set of facts that it would be six years from September 13th of 2005." Report of Proceedings at 15. The trial court did not reach the other issues in its ruling. Ms. Kelly appeals.

ANALYSIS

Summary Judgment—Statute of Limitations. The issue is whether the trial court erred in summarily dismissing Ms. Kelly's claims as time barred under RCW 4.16.040(1).

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We review a grant of summary judgment de novo, engaging in the same inquiry as the trial court. *Auto. United Trades Org. v. State*, 175 Wn.2d 537, 541, 286 P.3d 377 (2012). Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Huff v. Budbill*, 141 Wn.2d 1, 7, 1 P.3d 1138 (2000). We construe facts and reasonable inferences from those facts in the light most favorable to the nonmoving party. *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 788, 794, 64 P.3d 22 (2003). Summary judgment is appropriate if reasonable persons could reach but one conclusion. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

Whether a claim is time barred is a legal question we review de novo. *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995); *Wilson*, 98 Wn.2d at 437. A statute of limitations is designed to protect individuals and courts from stale claims. *Burns v. McClinton*, 135 Wn. App. 285, 293, 143 P.3d 630 (2006). A statutory period begins to run when the plaintiff's cause of action accrues. *Malnar v. Carlson*, 128 Wn.2d 521, 529, 910 P.2d 455 (1996). A cause of action accrues when the party has the right to apply to a court for relief. *Id.* Accrual of contract claims occurs on breach. *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 576, 146 P.3d 423 (2006).

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Generally, the discovery rule does not apply to an action for breach of contract. *See 1000 Virginia Ltd.*, 158 Wn.2d at 576.

RCW 4.16.040(1) provides that contract based claims are subject to a six-year statute of limitations. The parties do not dispute the applicable statutory period, but disagree on the accrual date of Ms. Kelly's claims. Ms. Kelly contends that the six-year statute of limitations did not begin to run until September 13, 2005, when Allianz underpaid her by adding only 3 percent interest to her principal repayment. She contends that before that date, she had no actual dispute with Allianz regarding the amount of interest and, therefore, no basis to apply to a court for relief.

Allianz responds that Ms. Kelly is attempting to avoid dismissal under the statute of limitations by mischaracterizing her breach of contract claim as one for "wrongful payment of interest." Resp't's Br. at 11. It argues that Ms. Kelly's claim accrued when she learned of the annuities' purported illegality on June 27, 2005, and that she could have asserted her claim for 12 percent interest at any time after the annuities were issued, including her request for rescission.

Arguably, if accrual of a contract claim occurs on breach, then Ms. Kelly's right to rescission accrued upon issuance of the unauthorized annuities in 2004. The contract was essentially breached at its inception, entitling Ms. Kelly to immediate restitution. *Noel v.*

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Cole, 98 Wn.2d 375, 383, 655 P.2d 245 (1982). In fact, Ms. Kelly acknowledges as much, stating “she had a right to the money from the moment she paid for the illegal investment Annuities.” Appellant’s Br. at 10. Nevertheless, if the claim accrued upon discovery of the illegality, Ms. Kelly had a cause of action on June 27, 2005, when the Office of Insurance Commissioner informed her the annuities were unauthorized for sale.

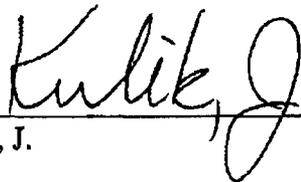
Ms. Kelly argues that she did not have an “actual dispute” with Allianz regarding the amount of interest to be paid on her principal amounts until September 13, 2005, when Allianz paid the 3 percent interest on the principal repayments.² Appellant’s Br. at 19. But her argument ignores the central fact that she was put on notice of the annuities’ illegality in June 2005, more than six years before she filed her lawsuit. At that point, the elements for a cause of action on the contract were existent and known to Ms. Kelly. Ms. Kelly’s failure to demand 12 percent interest did not delay or extend the statutory period.

² Ms. Kelly also argues that Allianz’s “partial payment” tolled the statute of limitations under RCW 4.17.270, which provides that when partial payment is made on an existing contract, the statute of limitations commences from the time the last payment was made. Ms. Kelly did not raise this argument below; therefore, we need not reach this contention. However, even if we address the argument, it fails. “Where circumstances are relied upon to toll the running of the statute of limitations, they must show a clear and unequivocal intention on the part of the obligor to keep alive the debt.” *Walker v. Sieg*, 23 Wn.2d 552, 561, 161 P.2d 542 (1945) (quoting *Stockdale v. Horlacher*, 189 Wash. 264, 267, 64 P.2d 1015 (1937)). Nothing in the record suggests that Allianz had any intention to renew a debt or pay more in the future. Where no reasonable juror could find for the nonmoving party, summary judgment is proper. If Ms. Kelly had presented this

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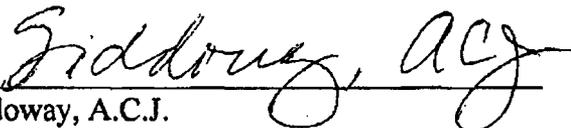
It is the fact of damage, not the amount, that is critical in determining when her claim accrued. In short, Ms. Kelly had grounds to sue Allianz in 2005, if not earlier. She did not file a lawsuit until over six years later. Accordingly, the trial court did not err in ruling that her claims were time barred under RCW 4.16.040(1).

The trial court did not reach the issue of what interest rate would apply. We affirm the trial court's summary judgment dismissal.

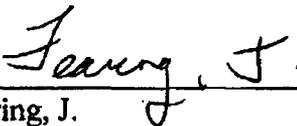


Kulik, J.

WE CONCUR:



Siddoway, A.C.J.



Fearing, J.

argument, it would not have prevented summary judgment dismissal.

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of February, 2014, I caused to be served the foregoing *Respondent's Answer Opposing Petition for Discretionary Review* on the following parties at the following addresses by first class United States mail:

David J. Lenci
Ashley S. Miller
K&L Gates LLP
925 4th Ave Ste 2900
Seattle, WA 98104-1158
Telephone: (206) 623-7580
Facsimile: (206) 623-7022
E-mail: david.lenci@klgates.com

Whitney J. Baran
K&L Gates LLP
618 W. Riverside Avenue, Suite 300
Spokane, WA 99201
Telephone: (506) 624-2100
Facsimile: (509) 456-0146
E-mail: whitney.baran@klgates.com

Attorneys for Plaintiff


Averil Rothrock

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From: Williams, Mary A. <MAWilliams@SCHWABE.com>
Sent: Wednesday, February 05, 2014 10:28 AM
To: OFFICE RECEPTIONIST, CLERK
Cc: Rothrock, Averil; Ebel, David R.; Been, Claire L.
Subject: RE: Case #89802-2 Kelly v. Allianz Life Insurance Company - Respondent's Answer Opposing Petition for Discretionary Review
Attachments: Respondent's Answer Opposing Petition for Discretionary Review.pdf

Dear Clerk:

Attached for filing is *Respondent's Answer Opposing Petition for Discretionary Review* regarding the above-referenced matter.

Thank you,

Mary

MARY A. WILLIAMS | Legal Assistant
SCHWABE, WILLIAMSON & WYATT
1420 5th Ave., Ste. 3400 Seattle, WA 98101
Direct: 206-407-1568 | Fax: 206-292-0460 | Email: mawilliams@schwabe.com
Assistant to Colin Folawn and Averil Rothrock
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