

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-60890

MICHAEL D. LOUGHRY; LAURA L. LOUGHRY,
Plaintiffs-Appellants,
v.
ALLSTATE INSURANCE COMPANY, 2415,
Defendant-Appellee.

Appeal from the United States District Court for the
Southern District of Mississippi, Biloxi
1:99-CV-191-GR

October 15, 2001

Before DUHÉ and BENAVIDES, Circuit Judges, and RESTANI*, District Judge.

PER CURIAM:**

Appellants Michael D. Loughry and Laura L. Loughry (the "Loughrys") appeal from an adverse summary judgment dismissing their contract and bad faith claims seeking punitive damages against Allstate Insurance Company. After careful review of the

* Judge, U.S. Court of International Trade, sitting by designation.

** Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

record, the briefs and oral argument presented upon submission, we affirm the judgment of the district court for the following reasons.

1. Even assuming that the water pipe leak could constitute a "sudden and accidental escape of water," the Loughrys failed to create a fact issue that such water directly caused the physical damage for which they claim damages. In the absence of such evidence, the provisions of the contract explicitly and unambiguously precluded recovery on the Loughrys' contract claim.

2. The Loughrys' claim of estoppel is without merit because, under Mississippi law, estoppel and waiver cannot extend insurance coverage to cover a risk or loss not contemplated by the language of an insurance policy. See *Mississippi Hosp. & Med. Serv. v. Lumpkin*, 229 So.2d 573, 576 (Miss. 1969); *Gilley v. Protective Life Ins. Co.*, 17 F.3d 775, 781 (5th Cir. 1994). In addition, even were estoppel available, the Loughrys failed to establish a fact issue with respect to reliance on Allstate's conduct.

3. Punitive damages based upon bad faith denial of coverage are not available because Allstate was entitled to summary judgment on the coverage issue.

Accordingly, the judgment of the district court is AFFIRMED.