



Jones also claimed that Ray Insurance was estopped from asserting that it had canceled Jones's policy because it later accepted premiums from Jones. Ray Insurance responded that Jones had waived this claim by failing to plead or present evidence of estoppel in the trial court. The court of appeals rejected Ray Insurance's waiver argument for a number of reasons, then added: "In any event, pursuant to Rule 2 of the Texas Rules of Appellate Procedure, we suspend the operation of Rule 94 of the Texas Rules of Civil Procedure to uphold appellant's estoppel claim as we do not believe appellees were surprised by such claim and will not be unfairly prejudiced thereby." *Id.* at 752. We disapprove any suggestion that Rule 2 of the Texas Rules of Appellate Procedure allows the courts of appeals to suspend rules governing pleading practice before the trial courts.

Because the court of appeals correctly held that fact issues preclude summary judgment against Jones, we deny the petition for review.

OPINION DELIVERED: December 12, 2002