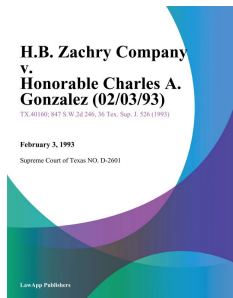


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H B ZACHRY COMPANY V HONORABLE CHARLES A GONZALEZ EBOOKS 2019



Author: Supreme Court of Texas

Realese Date: Expected @@expectedReleaseDate@@

Per Curiam In this original mandamus proceeding, H.B. Zachry Company seeks to compel the Honorable Charles Gonzalez to setu003cbr /u003e aside his order excluding witnesses pursuant to rule 215(5) of the Texas Rules of Civil Procedure. The witnesses were excludedu003cbr /u003e because they were not fully identified in answer to interrogatories of the defendant, Bristol Metals, Inc., more than thirtyu003cbr /u003e days before the date of trial as required by rule 166b(6). TEX. R. CIV. P. 166b(6). Since the ruling, Judge Gonzalez removedu003cbr /u003e the trial setting to a date more than thirty days from the date of the trial from which the witnesses were excluded.1 Because the trial setting was removed, we conclude that Zachry must be permitted an opportunity to timely supplement answersu003cbr /u003e in accordance with the rules governing discovery in a civil lawsuit. The automatic exclusion of the evidence and/or witnessesu003cbr /u003e from the trial provided by rule 215(5) does not continue beyond the resetting of the trial date where the date set is moreu003cbr /u003e than thirty days from the date of the original trial date. For the exclusion to remain beyond such a reset, the trial court'su003cbr /u003e ruling enforcing the exclusion must be based upon some other sanctionable conduct of the party. The record in this proceedingu003cbr /u003e demonstrates that the court's ruling is based solely upon the automatic exclusion of the evidence called for in the rule.2

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