

No. 07-1050

**In the Supreme Court of Texas**

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ZACHRY CONSTRUCTION CORPORATION, *ET AL.*,  
*Petitioners,*

v.

TEXAS A&M UNIVERSITY,  
*Respondent.*

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On Petition for Review from the  
Tenth Court of Appeals at Waco, Texas

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**REPLY OF TEXAS A&M UNIVERSITY IN SUPPORT OF  
MOTION TO DISMISS PETITIONERS' CASES AS MOOT  
PURSUANT TO TEXAS RULE OF APPELLATE PROCEDURE 56.2**

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Petitioners' opposition to the Rule 56.2 motion is puzzling. Petitioners for some reason bury this point on pages 7 and 8 of their Response and Opposition, but the proper course of action for the Court remains the same: Texas A&M University asks the Court to issue a short order indicating that the University is now a "settling person" for purposes of Chapter 33 of the Texas Civil Practice and Remedies Code—and that, accordingly, the University's motion is granted; Petitioners' case against the University is dismissed as moot; the judgments of the court of appeals and district court below are vacated; and the opinion of the court of appeals remains intact. Petitioners have shown no reason why oral argument

is necessary. A short order appears to be the best way to resolve this case and to avoid further burdening the Court.

Respectfully submitted,

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DAVID S. MORALES  
Deputy Attorney General for Civil Litigation

A handwritten signature in black ink, appearing to read "J. Ho", written over a horizontal line.

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**CERTIFICATE OF SERVICE**

I certify that on September 1, 2009, a true and correct copy of the foregoing document was served by certified U.S. mail, return receipt requested, on:

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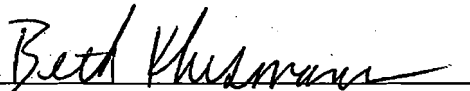
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In addition, courtesy copies were sent to all counsel by electronic mail on September 1, 2009.

  
Beth Klusmann



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September 1, 2009

**VIA HAND DELIVERY**

Mr. Blake A. Hawthorne, Clerk  
Supreme Court of Texas  
201 West 14th Street, Room 104  
Austin, Texas 78701

Re: No. 07-1050; *Zachry Construction Corporation, et al. v. Texas A&M University*

Dear Mr. Hawthorne:

Enclosed for filing in the above-referenced case are an original and twelve copies of the Reply of Texas A&M University in Support of Motion to Dismiss Petitioners' Cases As Moot Pursuant to Texas Rule of Appellate Procedure 56.2.

Please file-mark the extra copy of the notice and return it to me for my files. By copy of this letter, a copy of the notice is being served on opposing counsel.

Thank you for your assistance in this matter.

Sincerely,

Beth Klusmann

BEK/elh  
Enclosures

cc. Michael C. Steindorf - (via U.S. CMRRR)  
Robert D. Brown - (via U.S. CMRRR)  
John Michael Johanson - (via U.S. CMRRR)  
Randy A. Nelson - (via U.S. CMRRR)  
S. Ronald Keister (via *Interagency Mail*)