

# Texas



## Precedent Setting Design-Build Highway Case



Greg Ziegler



Bill Gardener

After a month-long trial, two ENR Top 50 Engineering Firms represented by Macdonald Devin's Architects & Engineers Team (Greg Ziegler, lead counsel; Bill Gardener, second chair) won a verdict against three ENR Top 50 Construction Firms in a major, precedent-setting cost overrun and disruption claim involving expansion of the 28-mile corridor of I-35E from I-635 in Dallas to US 380 in Denton. The two design firms were awarded \$8.2 million in unpaid fees that the contractors had withheld as an alleged set off for the damages the contractors contended they incurred due to quantities increases allegedly caused by differences between the bid phase, pre-award design and the post-award, final design. The Construction Firms sought \$78 million from the designers, but the Court awarded the contractors only \$3.2 million, resulting in a \$5 million net recovery for the Engineering Firms. The case is believed to be the first verdict of its kind nationwide arising out of a public trial involving an interstate highway design-builder suing its sub-consultant designers for cost overruns allegedly caused by differences between the pre-award bid set of plans the contractor claims to have utilized to bid the project and the post-award final set of construction plans used to build the project. The case was tried in Dallas County District Court in Dallas, Texas.