IN THE COURT OF APPEALS OF IOWA

No. 0-079 / 09-0270
Filed April 21, 2010

CONSTRUCTION SERVICES, INC.,
Plaintiff-Appellee/Cross-Appellant,

vs.

ECO TECH CONSTRUCTION, L.L.C.,
Defendant-Appellant/Cross-Appellee.

Appeal from the Iowa District Court for Dallas County, Paul R. Huscher, Judge.

Contractor Eco Tech Construction, L.L.C. appeals from the district court's judgment for money damages in an indemnity suit brought by construction manager Construction Services, Inc. Construction Services, Inc. cross-appeals. **AFFIRMED AS MODIFIED.**

Alan E. Fredregill of Heidman Law Firm, L.L.P., Sioux City, and Michael J. Coyle and Danita Grant of Fuerste, Carew, Juergens & Sudmeier, P.C., Dubuque, for appellant.

Lorraine J. May of Hopkins & Huebner, P.C., Des Moines, and Kevin J. Driscoll of Finley, Alt, Smith, Scharnberg, Craig, Hilmes & Gaffney, P.C., Des Moines, for appellee.

Heard by Vaitheswaran, P.J., and Potterfield and Mansfield, JJ.

POTTERFIELD, J.

This appeal requires us to review the contractual liabilities of a construction manager and a contractor on a building project where the contractor's employee was injured, he obtained workers' compensation benefits from his employer and damages from the construction manager, and the construction manager then sought indemnification from the contractor for the contractor's negligence.

I. Background Facts and Proceedings

Construction Services, Inc. (CSI) brought a claim for indemnification against Eco Tech Construction (Eco Tech) for settlement funds CSI paid to Eco Tech's employee, Bonifacio Lopez. CSI was the construction manager on a project to build a new middle school for the Waukee Community School District (WCSD). Eco Tech was one of nineteen contractors working on the project, each of which had a contract with WCSD. Each of those contracts contained a standard indemnification clause in favor of WCSD and CSI that required the contractors to indemnify CSI or the school district for damages paid as a result of injury while working on the construction project.

Three contractors are relevant to this appeal: (1) Eco Tech, which employed Lopez; (2) Central Steel, Inc. (Central Steel) a prime contractor which subcontracted to have Northwest Steel Erection Co., Inc (Northwest Steel) perform ironwork at the school; and (3) Northwest Steel, the subcontractor that erected the structural steel for the school and installed perimeter cabling as fall protection on part of the second floor.

The Occupational Safety and Health Act (OSHA) required workers on the second floor of this building to be protected with some type of fall protection. Each of the contractors had agreed to comply with OSHA requirements on the project. Lopez, a concrete finisher, was running a power trowel over newly poured concrete on the second floor of the project when the trowel got caught in a piece of structural steel. Lopez fell over an unguarded edge into a stairwell roughly fourteen feet below and sustained serious injuries.

Lopez received workers' compensation benefits from Eco Tech as a result of his workplace injury. Lopez also filed suit against CSI, Northwest Steel, and Central Steel. CSI settled Lopez's claim against it by payment of $961,224.25 on May 19, 2006. CSI filed this lawsuit on April 19, 2005, seeking indemnity from Eco Tech. The parties stipulated at trial that the settlement paid by CSI represented "a fair and reasonable settlement given the anticipated evidence in the underlying litigation based upon the exposure of CSI and the exposure of the parties from whom CSI could have been found liable."

A jury attributed to Eco Tech thirty-four percent of the negligence that caused the damages sustained by Lopez. The district court entered judgment based on the verdict in the amount of $326,816.24 (i.e., thirty-four percent of $961,224.25), plus attorney fees and interest.

Eco Tech appeals, arguing: (1) the indemnification clause in the General Conditions was unenforceable; (2) CSI failed to meet its burden of proof in its common law indemnity claim; (3) CSI had no enforcement rights under the indemnity provision; (4) the district court erred in failing to allow the jury to consider the theory of acquiescence; (5) the district court erred in failing to give

several requested jury instructions; and (6) the district court erred in failing to amend the judgment.

CSI cross appeals, arguing: (1) the district court erred in declining to grant a new trial because of prejudicial comments made during trial; (2) the district court erred in submitting jury instructions that allowed the jury to reach a conclusion inconsistent with certain contractual provisions; and (3) the verdict is contrary to law and inadequate, necessitating a new trial or additur.

II. Indemnity

A. Enforceability of Contractual Provision

The question whether Eco Tech is liable to CSI for contractual indemnity is a question of law for the court to decide, and our review is for errors at law. *Martin & Pitz Assocs., Inc. v. Hudson Constr. Servs., Inc.*, 602 N.W.2d 805, 808 (Iowa 1999). The indemnification clause in the contracts between the contractors and the school district for this project was contained in a separate document entitled General Conditions of the Contract for Construction (General Conditions). Paragraph 3.18.1 of the General Conditions contained the following indemnity clause:

> To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Construction Manager, . . . Construction Manager's . . . consultants, and agents and employees of any of them from and against claims, damages, losses and expenses . . . arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury . . . but only to the extent caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

Eco Tech asserts the indemnity clause is unenforceable by CSI, relying on *Martin & Pitz*, 602 N.W.2d 805. In that case, architects Martin & Pitz brought a claim for indemnity against a contractor whose employee was injured when he stepped on unsupported sheathing on a building project. *Id.* at 806. The injured employee sued the general contractor and two architectural firms, one of which was Martin & Pitz. *Id.* Martin & Pitz settled with the employee and then brought its indemnity claims. *Id.* In deciding Martin & Pitz's indemnity claims, the district court submitted to a jury the question of the allocation of fault in the underlying accident. *Id.* The jury found the employee was 100% at fault, and the district court denied indemnity. *Id.* Martin & Pitz appealed. *Id.*

The language of the indemnity provision in *Martin & Pitz* is nearly identical to the indemnification clause in this case. *Id.* at 809. The supreme court found that Martin & Pitz was seeking indemnification for its own negligence and ruled the indemnification clause was unenforceable by Martin & Pitz. *Id.* The only allegation of liability against Martin & Pitz in the underlying suit was allegedly defective design. *Id.* The court stated, "[A] party will not be indemnified for its own negligence 'unless the agreement provides for it in "clear and unequivocal" language.'" *Id.* (quoting *Payne Plumbing & Heating Co. v. Bob McKiness Excavating & Grading, Inc.*, 382 N.W.2d 156, 160 (Iowa 1986)). The supreme court found that the agreement did not provide for indemnification for Martin & Pitz's own negligence in clear and unequivocal language. *Id.*

We agree with CSI that, while *Martin & Pitz* involves the same contractual language, it is factually distinguishable from the present case. Lopez asserted liability against CSI because, among other things, CSI "knew or should have

known of the dangerous condition caused by the failure to provide fall protection for all areas on the second floor where the risk of falling by workers was present" and failed to remedy the dangerous condition caused by the lack of fall protection. CSI asserted Eco Tech was responsible for the failure to remedy this dangerous condition, and that its settlement with Lopez was based, at least in part, on the negligence of Eco Tech. Thus, unlike Martin & Pitz, CSI was not defending solely against a claim of its own negligence.

This is not a case where the purpose of the indemnity agreement was to avoid all risks created by CSI's own fault. *See id.* ("The purpose of statutes making indemnity agreements in construction contracts void and unenforceable is to prohibit avoidance by parties to construction contracts of all risks created by their own fault associated with contract performance . . . ."). Rather, CSI was seeking reimbursement for settlement costs paid because of its potential liability for Eco Tech's negligence, and the jury attributed to Eco Tech thirty-four percent of the negligence that caused Lopez's injury.[1] Because CSI was not seeking to be indemnified for its own sole negligence,[2] the indemnification clause was not required to contain "clear and unequivocal language" referred to in *Martin & Pitz*. We therefore decide that the district court correctly concluded that the indemnity clause is enforceable against Eco Tech. *See McComas-Lacina Constr. Co. v. Able Constr.*, 641 N.W.2d 841, 846 (Iowa 2002) (finding indemnity clause applied

[1] Workers' compensation does not function as a complete bar where the employer contracts with third parties to provide indemnification. *McComas-Lacina*, 641 N.W.2d 841, 846 (Iowa 2002).

[2] The indemnification clause contemplates that CSI might be partly negligent and still qualify for indemnification. It states that Eco Tech shall indemnify CSI for injury caused in whole or in part by Eco Tech's negligent acts or omissions whether or not such claim is caused in part by CSI.

where the general contractor did not seek indemnity based on its own negligence, but rather on the negligence of the subcontractor).

B. CSI as Third-Party Beneficiary

Eco Tech argues that CSI had no right to enforce the indemnity clause because CSI was not a third-party beneficiary to Eco Tech's contract with WCSD and because, to the extent CSI was a third-party beneficiary, Eco Tech's obligations to CSI stopped upon completion of the construction project. Our review is for errors at law. Iowa R. App. P. 6.907 (2009).

The General Conditions state in paragraph 1.1.2,

> The Contract represents the entire and integrated agreement between the parties hereto . . . . The Contract Documents shall not be construed to create a contractual relationship of any kind . . . (2) between the Construction Manager and Contractor . . . or (5) between any persons or entities other than the Owner and Contractor. The Construction Manager . . . shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of [its] duties.

1. Third-Party Beneficiary

We must first construe the General Conditions to determine whether they provide third-party beneficiary status for CSI. That question turns on the parties' intentions. *RPC Liquidation v. Iowa Dep't of Transp.*, 717 N.W.2d 317, 321 (Iowa 2006). "In determining the parties' intention we are bound by what the contract says except in places of ambiguity." *Id.* "[C]ontractual indemnity is not disfavored and ordinarily an agreement will be enforced between the parties according to its terms." *Pirelli-Armstrong Tire Corp. v. Midwest-Werner & Pfleiderer, Inc.*, 540 N.W.2d 647, 649 (Iowa 1995).

Paragraph 1.1.2 provides that the contract shall not be construed to create a contractual relationship of any kind between CSI and Eco Tech, except that CSI is entitled to performance and enforcement of obligations by Eco Tech intended to facilitate performance of its duties. Thus, Eco Tech asserts that under the contract, its only duty to CSI was to facilitate the performance of its duties.

However, section 3.18 supplies an indemnification clause, providing that Eco Tech shall indemnify CSI for certain claims. Eco Tech asserts that section 3.18 should be interpreted to be enforceable only by WCSD. This is inconsistent with the plain language of section 3.18, which states that it applies to the "Construction Manager, Architect, Construction Manager's and Architect's consultants, and agents and employees of any of them." Thus, Eco Tech's interpretation would significantly change the scope of the indemnity clause as it is provided in the General Conditions. We determine the parties did not intend to alter the provisions of section 3.18 in such a way.

Rather, the parties, in drafting this contract, intended to limit the contractual rights of anyone not a party to the contract except as specifically provided by the contract. The contract provides an exception in paragraph 1.1.2 when it affords the construction manager the right to performance and enforcement of certain obligations under the contract. Paragraph 3.18.1 carves out another exception to the general limitation on third-party rights, providing specified parties the right to indemnification under the contract.

We find this case is factually distinguishable from the cases cited by Eco Tech to support its contention that CSI is not a third-party beneficiary under the

indemnification clause of the contract and therefore has no enforcement rights. *See Fulgham v. Daniel J. Keating Co.*, 285 F. Supp. 2d 525, 539 (D.N.J. 2003) (finding that where the party seeking indemnification was not mentioned in the indemnification language and the contract specifically provided "[i]t is not the intention of this agreement or anything herein provided to confer a third-party beneficiary right of action upon any person whatsoever," that party was not a third-party beneficiary under the terms of the contract); *Ratcliff Architects v. Vanir Constr. Mgmt., Inc.*, 88 Cal. App. 4th 595, 603 (Cal. Ct. App. 2001) (finding only the owner—as a party to its contract with the construction manager, which provided that "Construction Manger shall indemnify and save harmless [owner], and its officers, agents, representatives, and employees"—had the right to enforce indemnification rights provided in the contract on behalf of itself or its agents). In this case, the indemnification clause specifically provided indemnity for the construction manager, CSI. Therefore, we find the intent of the parties was to make CSI a third-party beneficiary of the contract with the right to enforce the indemnification clause.

2. Termination of Enforcement Rights upon Completion of Project

Eco Tech argues in the alternative that CSI is an intended beneficiary of Eco Tech's contract with WCSD only to the extent Eco Tech must facilitate CSI in the performance of its duties. Eco Tech asserts that when construction of the school was complete, CSI's duties were complete; therefore, Eco Tech was no longer contractually obligated to facilitate CSI with the performance of its duties. Eco Tech contends that because CSI attempted to enforce the indemnity clause

after construction of the project was complete, enforcement of the indemnity clause would not facilitate the performance of CSI's duties.

Consistent with our findings above, we disagree with this argument. We find that CSI had the right to enforce the indemnity clause as a third-party beneficiary, regardless of whether the construction project was ongoing or had been completed.

Eco Tech also relies on *Campbell v. Mid-American Constr. Co.*, 567 N.W.2d 667 (Iowa Ct. App. 1997) to assert that because it was only required to obtain general liability insurance, as opposed to completed operations coverage, the indemnification provision does not apply to injuries sustained after the contract had been completed. In *Campbell*, this court found that because the contract at issue required the subcontractor to obtain general liability insurance, which does not provide coverage after a project is completed, the contract revealed "an intention to limit indemnification while the work is in progress." *Campbell*, 567 N.W.2d at 670. Because the worker in *Campbell* was injured after the subcontractor had completed the work required under the contract and left the job site, we found the indemnification did not apply to injuries sustained after the contract had been completed. *Id.*

However, Lopez was injured before Eco Tech's contract had been completed, rendering *Campbell* inapplicable to this case. Eco Tech was working at the construction site at the time the injury occurred. Because the injuries were sustained while the contract was still being completed, we find that *Campbell* is factually distinguishable from this case and that the indemnification provision applies to the injuries sustained by Lopez.

C. Common Law Burden of Proof

Eco Tech argues CSI failed to prove the elements required to bring a common law claim of indemnity. CSI responds that its claim for indemnification is based on contractual language, not common law. Though CSI's petition asserted both a contractual and a common law claim of indemnity, because we find CSI had a contractual claim of indemnity, we decline to address whether CSI proved its common law claim of indemnity.

D. Theory of Acquiescence

Eco Tech argues the district court erred in failing to allow the jury to consider the theory of acquiescence. Because the theory of acquiescence applies only to CSI's claim of common law indemnity, which we are declining to address, we also decline to address this argument.

III. Jury Instructions

Eco Tech asserts the district court erred in failing to give several requested jury instructions. We review a challenge to the district court's refusal to submit a jury instruction for correction of errors at law. *Pexa v. Auto Owners Ins. Co.*, 686 N.W.2d 150, 160 (Iowa 2004). *But see Summy v. City of Des Moines*, 708 N.W.2d 333, 340 (Iowa 2006) ("We review the . . . claim that the trial court should have given the defendant's requested instructions for an abuse of discretion."). An error in giving or refusing to give an instruction does not require reversal unless the error is prejudicial. *Sunrise Developing Co. v. Iowa Dep't of Transp.*, 511 N.W.2d 641, 644 (Iowa Ct. App. 1993).

A. Primary Cause of the Injury or Damage

Eco Tech asserts the jury should have been instructed that it was entitled to return a verdict that the fault of CSI was the "primary cause of the injury or damage," as required by paragraph 3.18.3 of the General Conditions. Paragraph 3.18.3 states:

> The [indemnification] obligations of the Contractor. . . shall not extend to the liability of the Construction Manager . . . arising out of . . . the giving of or the failure to give directions or instructions by the Construction Manager . . . provided such giving or failure to give is the primary cause of the injury or damage.

Eco Tech requested the following instruction: "Sole Proximate Cause. Eco Tech claims the sole proximate cause of Mr. Lopez's injury was the conduct of CSI in the giving of or the failure to give directions or instructions. Sole proximate cause means the only proximate cause." The instruction then listed the two elements Eco Tech had to prove for its defense of sole proximate cause, including "CSI's failure to give directions or instructions on the job site . . . was the only proximate cause of Mr. Lopez's damage." Eco Tech also requested an accompanying verdict form listing, "Issue #1: Construction Manager Sole Proximate Cause." Question B on this verdict form asked, "Was CSI's fault in 'the giving of or the failure to give directions or instructions the primary cause of the injury or damage' to Lopez?"

CSI argues that this issue has not been preserved for appeal because the requested jury instruction addressed the issue of sole proximate cause, not primary cause. We agree. The jury instruction at issue never uses the words "primary cause." Though the verdict form uses the phrase "primary cause" once, we find this is insufficient to preserve error. The relevant jury instruction does not

address the issue of primary cause. Because this issue was not properly preserved, we decline to address it.

B. Allocation of Fault

Eco Tech argues Lopez was at least partially responsible for his injury and the failure to permit the jury to consider Lopez's fault is an error of law necessitating a new trial. The district court, when addressing this issue upon Eco Tech's motion for new trial, stated,

> [O]ur assumption is that the settlement that was made between [CSI] and Mr. Lopez took into account Mr. Lopez's fault . . . . And it would not be appropriate to permit [the jury] to again deduct Mr. Lopez's fault."

The parties stipulated that the underlying claim had been settled for $961,224.25 and that the amount represented "a fair and reasonable settlement given the anticipated evidence in the underlying litigation." We agree with CSI and the district court that Lopez's fault has already been considered, and allowing the jury to consider it a second time would be duplicative and unfair.

C. Impeachment Instruction

Eco Tech argues the district court erred in giving the jury a generic impeachment instruction rather than an instruction that specifically told the jury which witness had been impeached. Eco Tech asserted only one witness had been impeached during trial. The jury was present for the examination and cross-examination of all witnesses. Further, the judge provided the jury with a general impeachment instruction directing it how to handle inconsistent testimony. "[Jury] instructions should not . . . give undue prominence to any particular aspect of a case." *Stover v. Lakeland Square Owners Ass'n*, 434

N.W.2d 866, 868 (Iowa 1989). The jury is free to accept or reject the testimony of witnesses. *State v. Arne*, 579 N.W.2d 326, 328 (Iowa 1998). The district court did not err in failing to give this requested instruction.

D. Premises Liability

Eco Tech argues the jury should have been instructed that one of the ways in which CSI could have been found liable to Lopez was based on a premises liability claim. Eco Tech cites no authority in support of this argument; therefore we decline to address this issue. *See* Iowa R. App. P. 6.903(2)(*g*)(3); *Pierce v. Staley*, 587 N.W.2d 484, 487 (Iowa 1998).

IV. Duties Imposed by Law, Contract, and OSHA

Eco Tech argues the district court erred in failing to give the jury certain requested instructions regarding duties imposed on the parties by law, contract, and OSHA. We find that the court properly instructed the jury regarding the law that covered the instructions requested by Eco Tech. "Under Iowa law, a court is required to give a requested instruction when it states a correct rule of law having application to the facts of the case and when the concept is not otherwise embodied in other instructions." *Herbst v. State*, 616 N.W.2d 582, 585 (Iowa 2000). Because jury instructions ten through fourteen embodied the concepts in the requested instructions, the court did not err in declining to give the requested instructions.

V. Amendment of Judgment

On January 16, 2009, the district court entered judgment in favor of CSI to include interest on the judgment "at 3.42% from and after April 19, 2005." Eco Tech argues the district court erred in failing to amend the judgment to correct

the interest rate and to disallow any prejudgment interest. Our review is for errors at law. Iowa R. App. P. 6.907.

A. Interest Rate

In entering judgment, the district court used the interest rate as of the date of the verdict, November 18, 2008. Eco Tech asserts, and CSI agrees, that the correct interest rate would be the rate applicable to judgments entered on January 16, 2009, which was 2.49%. We agree. Iowa Code section 668.13(3) (2005) provides:

> Interest shall be calculated as of the date of judgment at a rate equal to the one-year treasury constant maturity published by the federal reserve in the H15 report settled immediately prior to the date of the judgment plus two percent.

Using this formula, the applicable interest rate for this judgment, entered on January 16, 2009, should be 2.49%.

B. Prejudgment Interest

Eco Tech also argues, and CSI agrees, that the judgment should be amended to disallow any prejudgment interest that should not have accrued until CSI settled the underlying lawsuit and paid its attorney fees. The district court provided for interest to accrue starting April 19, 2005, the date CSI filed its petition in this matter. CSI did not pay any settlement funds until May 19, 2006. Iowa Code section 668.13(1) provides, "Interest . . . shall accrue from the date of the commencement of the action." However, the parties agreed that interest should begin to accrue May 19, 2006, the date on which CSI paid settlement funds. We will not interfere with the parties' agreement.

VI. Cross-Appeal

A. Prejudicial Comments

CSI cross-appeals, arguing the district court erred in denying its motion for new trial based on prejudicial comments made during trial. Because the motion for new trial and the ruling were based on a discretionary ground, we review the district court's decision for an abuse of discretion. *Vaughan v. Must, Inc*., 542 N.W.2d 533, 542 (Iowa 1996). An abuse of discretion exists when "the court exercised [its] discretion on grounds or for reasons clearly untenable or to an extent clearly unreasonable." *State v. Maghee*, 573 N.W.2d 1, 5 (Iowa 1997).

Pursuant to Iowa's workers' compensation statute codified at Iowa Code section 85.20, Lopez was prohibited from suing his employer, Eco Tech. The parties anticipated that the jury might be confused as to why Lopez did not sue Eco Tech or how Eco Tech could be liable to CSI if it was not liable to Lopez. Therefore, the parties agreed that the court would instruct the jury that Lopez had received workers' compensation benefits, which prevented him from maintaining a lawsuit directly against Eco Tech. The parties agreed that would be the only reference to workers' compensation during trial.

CSI asserts that during the course of trial, Eco Tech made several references to workers' compensation that were prejudicial and misleading to the jury. A review of the record reveals several instances in which workers' compensation was mentioned. In cross-examining one of CSI's witnesses, an attorney for Eco Tech asked, "And you're aware that Mr. Lopez was entitled to and did receive workers' compensation benefits, didn't he?" One of Eco Tech's witnesses mentioned workers' compensation, saying, "[M]y understanding also is

that Eco Tech, as the employer of Mr. Lopez, was responsible to take care of him under workmen's compensation." This same witness later stated, "Eco Tech had an employee who was injured. And Eco Tech took care of that employee under workmen's compensation." CSI objected to all three of these instances.

Both parties also made references to workers' compensation in opening and closing arguments, but these references did not go beyond what the judge told the jury regarding workers' compensation. Eco Tech also made references to workers' compensation when questioning witnesses by asking questions such as: "Do those claims, any of them, mention Eco Tech at all?" or "Again, all these were criticisms made against anybody and everybody except Eco Tech." The record also shows that one of the jurors sent a note to the court during trial asking about the impact of workers' compensation.

The district court addressed this issue saying, "[T]hose references, although inappropriate, did not deny the parties a fair trial; . . . they were not inflammatory to the jury; . . . they did not affect the verdict in this case . . . ."

We find that the district court did not abuse its discretion in making this determination. Though the juror's question regarding workers' compensation is of some concern, it is understandable that a juror, given limited information on the subject, would not fully understand the impact of workers' compensation. The district court instructed the jury, "Mr. Lopez received workers' compensation benefits, which then prevented him from maintaining a lawsuit against his employer, Eco Tech." This instruction gave the information upon which the parties had previously agreed and should have operated to cure any

misunderstandings.[3] The district court did not abuse its discretion in concluding that, when considering the totality of the circumstances, the references to workers' compensation did not deny the parties a fair trial.

B. Jury Instructions

1. Inconsistency with Contract

CSI also argues the district court erred in submitting jury instructions that allowed the jury to reach a conclusion inconsistent with the contractual provisions by which the parties were bound.

CSI requested the following jury instruction: "Eco Tech was solely responsible under the terms of the contract for safety precautions and programs. (General Conditions 4.6.6)." The requested verdict form accompanying this instruction directed the jury that it must assess 100% of the fault to Eco Tech if it found that Eco Tech's negligence or omission to perform some obligation required of it proximately caused injury to Lopez. CSI argues this instruction allowed the jury to assess Eco Tech's conduct under the terms of the contract.

We determine that the instruction and verdict form do not accurately and fully state the contract terms. Though the General Conditions provide that Eco Tech is responsible for safety precautions and programs in paragraph 4.6.6, paragraph 10.1.1 provides that CSI is to review and coordinate the safety programs of the contractors. The requested instruction and verdict form do not allow the jury to consider CSI's possible negligence in this regard. The

[3] Though the parties do not agree on exactly when the juror asked this question, they do agree that the juror asked the question before jury instructions had been given.

indemnification clause provides that Eco Tech shall indemnify CSI only to the extent of the damages caused by Eco Tech.

The submission of instructions which clearly overemphasize one party's theory of the case is error. *Sunrise Developing Co. v. Iowa Dep't of Transp*., 511 N.W.2d 641, 644 (Iowa Ct. App. 1993). The submission of CSI's requested instruction would have overemphasized CSI's theory of the case. We agree with the court's conclusions that the extent of Eco Tech's negligence was a factual dispute and was to be submitted to the jury. The district court properly declined to give this jury instruction, which would have allowed the jury to assign fault to Eco Tech only under those terms of the contract that CSI considered beneficial. The contract does not support CSI's argument that Eco Tech must be held completely responsible for fully indemnifying CSI.

2. Inconsistency Between Verdict Form and Instructions

CSI also argues the verdict form was misleading in that it identified four separate entities—Eco Tech, CSI, Northwest Steel, and Central Steel—among which the jury was to allocate fault. The parties had agreed and the jury was instructed that Northwest Steel and Central Steel were to be considered as one party, but the verdict form separated them with semicolons. CSI argues this was misleading and inherently prejudicial.

The district court responded to this argument, saying,

> [I]t didn't matter whether we treated Northwest Steel and Central Steel as one party . . . . The issue was of all of the fault of anyone, except Mr. Lopez, what percentage of that fault was attributable to Eco Tech Construction.

We agree. The jury was instructed to determine the fault of Eco Tech as opposed to everyone else. Thus, whether the jury believed Northwest Steel and Central Steel were one party or two parties is irrelevant.

C. Verdict is Contrary to Law and Inadequate

CSI argues that contract interpretation is a question of law and that as a matter of law, under the terms of the contract, Eco Tech was solely responsible for Lopez's safety and must indemnify CSI for the total amount of the settlement. We review claims that the court's ruling is contrary to law for errors of law. *Greenwood v. Mitchell*, 621 N.W.2d 200, 204 (Iowa 2001). For the reasons stated above, we disagree with CSI's claim that Eco Tech was solely responsible under the terms of the contract. Eco Tech's liability was a factual dispute properly submitted to the jury.

AFFIRMED AS MODIFIED.