STATE OF MICHIGAN

COURT OF APPEALS

STANLEY S. KOMAJDA, Personal Representative of the ESTATE OF MARY J. KOMAJDA,

Plaintiff-Appellee,

V

WACKENHUT CORPORATION,

Defendant-Appellant,

and

FORD MOTOR COMPANY,

Defendant.

UNPUBLISHED
February 1, 2002

No. 219204
Macomb Circuit Court
LC No. 93-004989-CK

Before: Owens, P.J., and Holbrook, Jr., and Talbot, JJ.

PER CURIAM.

This case arises from the shooting death of plaintiff's decedent, Mary Komajda, at her place of employment by her former lover and co-employee, Jerry Belanger.[1] Komajda and Belanger were employed at Ford Motor Company's Chesterfield Township trim plant. Plaintiff brought this action against defendant Ford Motor Company (Ford), and defendant Wackenhut Corporation (Wackenhut), which had contracted with Ford for the provision of security services. Plaintiff and Ford settled. Following a jury trial, the trial court entered judgment on the jury's verdict against Wackenhut on theories of breach of contract and negligence. Wackenhut appeals as of right. We affirm.

I. Background

Ford entered into a contract to purchase security services from Wackenhut. Wackenhut was required to follow Ford's security manual and union rules. Wackenhut's responsibilities included preventing theft, protecting employees from injury, maintaining order among

[1] Jerry Belanger was convicted for the shooting and served approximately five years in prison.

employees, and controlling access to the premises. Wackenhut guards were required to spot check employees for identification cards. The spot checks required a guard to be outside of the guard shack and watch employees. Guards were also supposed to spot check bags or boxes for stolen items. They could prohibit unauthorized items from being carried into the plant and could deny admission to employees who were displaying irrational behavior. Security guards were also required to look for unusual activity. The contract is lengthy and includes, in relevant part:

> 1. Operations - - A. Seller's Security Guard Services shall (i) protect Buyer's employees and property (including documents, goods, and materials), and property of others in the possession of Buyer, from any loss, fire, theft, labor disputes, etc., (ii) maintain order among employees and visitors at the Premises, and (iii) control access to the Premises.
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> B. Buyer will furnish to Seller a copy of the portions of Buyer's Industrial Relations Administration Manual that describe Buyer's security procedures and polices. Seller's Security Guard Services shall comply with all of the procedures and policies of the manual including in-plant security patrols, parking lot patrols, perimeter patrols, employee and visitor controls, shipping and receiving inspections, gate control (pedestrian, vehicle, and railroad), fire protection, and safety and emergency duties.

The contract also stated that "no firearms" are to be permitted in the plant.

Employees can enter the plant without passing any security guards. Areas monitored by cameras do not usually have guards present. Ford did not install metal detectors or require their installation at points of ingress. Suspicious packages were checked for company property, drugs, alcohol, tools, or weapons. In order to detain an employee, the guard would have to observe something that appeared suspicious. Wackenhut had no responsibilities to patrol the inside of the offices.

On September 20, 1989, a year and a half before the shooting incident giving rise to this action, Wackenhut employees witnessed an assault committed by Belanger upon Komajda. Belanger choked Komajda, struck her, and pulled her hair. He stated that he would kill her. The security guards separated Belanger from Komajda. The security guards walked Belanger and Komajda into the plant, ensured that they went their separate ways, and made an incident report. Shortly after the assault, Komajda returned to the guard shack and indicated that she wanted to report the incident and press charges. The Wackenhut guard assured her that he "would take care of the problem." The Ford supervisor was notified and the police were called. The police arrived and investigated the incident.

After this incident, Belanger and Komajda complained about each other both formally and informally to other employees, union representatives, and to Steve Alexander, the security supervisor employed by Ford. The evidence adduced at trial showed that Komajda and Belanger had a volatile relationship outside of work. No further physical altercations occurred between Belanger and Komajda in the workplace before April 25, 1991 and no special measures were taken to maintain order between Belanger and Komajda. They came to and left work without exhibiting unusual behavior and they continued to work the same shift.

On the evening of April 25, 1991, Belanger entered the plant. He proceeded to the union office. Belanger removed a handgun from his overalls and shot Komajda.

II. Procedural History

Plaintiff proceeded and succeeded on two theories of liability. One was that Komajda was a third-party beneficiary of the contract between Ford and Wackenhut and, as such, had standing to sue for breach of contract. The second was that Wackenhut had voluntarily assumed a duty to protect her and that it was negligent in performing its duty. Wackenhut moved for summary disposition, arguing that Komajda was not a third-party beneficiary of the contract and could not maintain her breach of contract claim and also that Wackenhut had no duty to protect Komajda and thus, the negligence claim could not survive. The trial court disagreed, finding that plaintiff could maintain both the negligence and breach of contract causes of action. The trial court found that there was a factual question about whether Wackenhut failed to fulfill its voluntarily assumed duty to provide specific security services. The trial court further found that Wackenhut and Komajda had a special relationship by virtue of the security contract and that Wackenhut had contracted to protect Komajda and other employees from injury, disorder, and unauthorized access to the plant premises, including access with firearms and ammunition. The case proceeded to trial.

At the close of plaintiff's proofs, Wackenhut moved for directed verdict, arguing that Wackenhut owed no duty to Komajda. The trial court denied Wackenhut's motion. The jury returned its verdict finding that Wackenhut was negligent and that it breached its security contract. The jury found that both the breach of contract and the negligence were proximate causes of Komajda's death. The jury awarded plaintiff $1,750,000 in damages.

Wackenhut moved for judgment notwithstanding the verdict (JNOV). Wackenhut again argued that it did not owe Komajda any legal duty. Wackenhut relied upon this Court's decision in *Krass v Tri-County Security, Inc*, 233 Mich App 661; 593 NW2d 578 (1999), which had been issued since the jury rendered its verdict in this case. Wackenhut argued that *Krass* was dispositive of the question of a security company's duty to protect third parties from criminal acts. Wackenhut also moved for a new trial. Wackenhut argued that plaintiff had improperly made a "golden rule" argument to the jury which caused prejudice warranting a new trial, and also that the jury verdict was excessive.[2] The trial court disagreed and denied both motions.

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[2] After oral argument, Wackenhut submitted to this Court a copy of its motion for a new trial which was filed in the trial court. Wackenhut maintained that at oral argument plaintiff's counsel had misrepresented that Wackenhut failed to challenge the evidentiary support for the jury's verdict. Our review of the record indicates that Wackenhut did challenge the evidence "on the issue of foreseeability or with respect to any actions which could conceivably have been reasonably taken by Defendant Wackenhut Corporation which would have prevented or stopped or which could have caused Ms. Komajda's attacker from successfully killing her." Although this assertion was contained in Wackenhut's motion, it was not addressed in the supporting brief. At the hearing on Wackenhut's motions for JNOV and for a new trial, Wackenhut argued the evidence as it relates to the existence of a duty, not the breach thereof. On appeal, Wackenhut
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III. Wackenhut's First Issue on Appeal: Third-Party Beneficiary Status and Voluntary Assumption of Duty

In its first issue on appeal, Wackenhut argues that the trial court erroneously denied its motions for summary disposition, directed verdict, and JNOV. Wackenhut advances the same arguments as in the trial court: (1) that Komajda was not a third-party beneficiary of the security contract, and (2) that Wackenhut did not voluntarily assume a duty to protect Komajda.

A. Standards of Review:

This Court reviews de novo decisions on motions for summary disposition. *Lockridge v State Farm Mutual Auto Ins*, 240 Mich App 507, 511; 618 NW2d 49 (2000).

> Motions under MCR 2.116(C)(10) test the factual support of the plaintiff's claim. The court considers the affidavits, pleadings, depositions, admissions, and other evidence submitted to determine whether a genuine issue of any material fact exists to warrant a trial. Both this Court and the trial court must resolve all reasonable inferences in the nonmoving party's favor. [*Id.* (citations omitted).]

This Court also reviews de novo the trial court's decision to deny a motion for directed verdict. *Brisboy v Fibreboard Corp*, 429 Mich 540, 549; 418 NW2d 650 (1988); *Smith v Jones*, 246 Mich App 270, 273; 632 NW2d 509 (2001).

> In reviewing a denied motion for a directed verdict, this Court must determine whether the party opposing the motion offered evidence on which reasonable minds could differ. The test is whether, viewing the evidence in the light most favorable to the adverse party, reasonable persons could reach a different conclusion. If so, the case is properly left to the jury to decide. [*Id.* (citations omitted).]

Finally, this Court reviews de novo the trial court's ruling on a JNOV motion. *Attard v Citizens Ins Co of America*, 237 Mich App 311, 321; 602 NW2d 633 (1999). "In reviewing a trial court's denial of a defendant's motion for JNOV, this Court should examine the testimony and all legitimate inferences therefrom in the light most favorable to the plaintiff." *Id.* (citation omitted). "Only if the evidence so viewed fails to establish a claim as a matter of law, should the motion be granted." *Wilkinson v Lee*, 463 Mich 388, 391; 617 NW2d 305 (2000).

B. Breach of Contract Claim

With regard to the breach of contract claim, Wackenhut argues only that Komajda was not a third-party beneficiary of the security contract and thus, a breach of contract action could

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challenges the evidence supporting plaintiff's claim of negligence premised on a voluntary assumption of duty, but not the evidence of breach of contract.

not be maintained. Whether a person is a third-party beneficiary is a determination to be made by the court using an objective standard. *Dynamic Const Co v Barton Malow Co*, 214 Mich App 425, 427; 543 NW2d 31 (1995). See also *Kammer Asphalt Paving Co v East China Twp Schools*, 443 Mich 176, 189; 504 NW2d 635 (1993), where the Court stated that the "Court must objectively determine 'from the form and meaning of the contract itself' whether a party is a third-party beneficiary as defined in MCL 600.1405."

MCL 600.1405 provides, in relevant part:

> Any person for whose benefit a promise is made by way of contract, as hereinafter defined, has the same right to enforce said promise that he would have had if the said promise had been made directly to him as the promisee.
>
> (1) A promise shall be construed to have been made for the benefit of a person whenever the promisor of said promise had undertaken to give or to do or refrain from doing something directly to or for said person.
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> (2) (a) . . .
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> (b) If such person is not in being or ascertainable at the time the promise becomes legally binding on the promisor then his rights shall become vested the moment he comes into being or becomes ascertainable if the promise has not been discharged by agreement between the promisor and the promisee in the meantime.

Recently, in *Koenig v South Haven*, 460 Mich 667, 676-680; 597 NW2d 99 (1999), our Supreme Court examined third-party beneficiary status:

> In describing the conditions under which a contractual promise is to be construed as for the benefit of a third party to the contract in § 1405, the Legislature utilized the modifier "directly." Simply stated, section 1405 does not empower just any person who benefits from a contract to enforce it. Rather, it states that a person is a third-party beneficiary of a contract only when the promisor undertakes an obligation "directly" to or for the person. This language indicates the Legislature's intent to assure that contracting parties are clearly aware that the scope of their contractual undertakings encompasses a third party, directly referred to in the contract, before the third party is able to enforce the contract. Subsection 1405(2)(b)'s recognition that a contract may create a class of third-party beneficiaries that includes a person not yet in being or ascertainable precludes an overly restrictive construction of subsection 1405(1). That is, it precludes a construction that would require precision that is impossible in some circumstances, such as would be the case if there were a requirement in all cases that a third-party beneficiary be referenced by proper name in the contract. This is simply to say that the Legislature, in drafting these two provisions, apparently wanted to strike a balance between an impossible level of specificity and no specificity at all. This means that there must be limits on the use of subsection 1405(2)(b) to broaden the interpretation of subsection 1405(1) because otherwise the result is to remove all meaning from the Legislature's use of the modifier "directly." We are led to this analysis because a court's duty is to give meaning

to all sections of a statute and to avoid, if at all possible, nullifying one by an overly broad interpretation of another. It is our duty then in applying this statute to our facts to comply with this rule.

Initially, it must be noted that there is a temptation to blur the distinction between direct and incidental beneficiaries because, as this case demonstrates, the claims of putative third-party beneficiaries are often compelling. Yet the Legislature, apparently apprehensive about creating a disincentive to contract because of the fear of unanticipated third-party claims, chose to change the law with great caution. It is appropriate that we, as Michigan courts before us, respect this cautious approach.

Decisions of this Court interpreting the third-party beneficiary statute are in harmony with this guarded approach that attempts to be properly permissive in defining persons in a class (subsection 1405[2]) without obliterating the statute's safeguards by disregarding the requirement that an obligation be undertaken directly for a third party's benefit (subsection 1405[1]). This careful approach can be seen in *Greenlees v Owen Ames Kimball Co*, 340 Mich 670, 676; 66 NW2d 227 (1954), where this Court, in setting the stage for its analysis of our third-party beneficiary statute, quoted with approval 12 Am Jur, Contracts, § 282, p 834:

"The principle that one not a party or privy to a contract but who is the beneficiary thereof is entitled to maintain an action for its breach is not so far extended as to give to a third person who is only indirectly and incidentally benefited by the contract the right to sue upon it. An incidental beneficiary has no rights under the contract. A third person cannot maintain an action upon a simple contract merely because he would receive a benefit from its performance or because he is injured by the breach thereof. Where the contract is primarily for the benefit of the parties thereto, the mere fact that a third person would be incidentally benefited does not give him a right to sue for its breach."

The import of this discussion is that as a general matter, even as it is with our statute, only intended third-party beneficiaries, not incidental beneficiaries, may enforce a contract under § 1405. Similarly, consistent with our specific rule (subsection 1405[2][b]), this Court has adopted the persuasive rule that a third-party beneficiary "may be one of a class of persons, if the class is sufficiently described or designated." That is, a third-party beneficiary may be a member of a class, but the class must be sufficiently described. This follows ineluctably from subsection 1405(1)'s requirement that an obligation be undertaken directly for a person to confer third-party beneficiary status. As can be seen then, this of course means that the class must be something less than the entire universe, e.g., "the public"; otherwise, subsection 1405(2)(b) would rob subsection 1405(1) of any narrowing effect. The rationale would appear to be that a contracting party can only be held to have knowingly undertaken an obligation directly for the benefit of a class of persons if the class is reasonably identified. Further, in undertaking this analysis, an objective standard is to be used to determine from the contract itself whether the promisor undertook "to give or to do or to refrain from doing

> something directly to or for" the putative third-party beneficiary. [Citations omitted.]

This Court has stated the objective test in various ways. In *Dynamic, supra* at 428, this Court stated that third-party beneficiary status "requires an express promise to act to the benefit of the third party; where no such promise exists, that third party cannot maintain an action for the breach of the contract." In *Paul v Bogle*, 193 Mich App 479, 491; 484 NW2d 728 (1992), this Court stated, "[t]o be an intended third-party beneficiary, the promisor must have undertaken to do something to or for the benefit of the party asserting such status." *Id.*

> An objective test is used to determine the claiming party's status, and focuses upon the contract itself. Where the contract is intended to primarily benefit its signatories, the mere fact that a third person would be incidentally benefited does not entitle that person to its protection. [*Id.*]

The subjective intent of the parties to the contract is irrelevant in determining who is a third-party beneficiary. *Oja v Kin*, 229 Mich App 184, 193; 581 NW2d 739 (1998).

Wackenhut argues that *Krass* is outcome determinative of the issue of third-party beneficiary status for Ford's employees. In *Krass, supra*, an injured concert attendee was not a third-party beneficiary of the security contract between the security company and the premises owner. "There was no provision in this contract relating to the safety of patrons, employees, or anyone else." *Krass, supra* at 665-666. Thus, the injured plaintiff was not a third-party beneficiary "because the contract did not provide for something to be done directly to or for him, or any other patron." *Id.*

Wackenhut argues that *Krass* makes clear that a security company's promise to deter crime or protect employees does not turn incidental beneficiaries into direct beneficiaries. In making this argument, Wackenhut ignores the plain language of *Krass*, which turned on the fact that the safety of patrons was not discussed in the contract. Further, in arguing that Komajda was not a third-party beneficiary, Wackenhut relies on the alleged subjective intentions of Ford, which are unsupported by the record and irrelevant to the inquiry. *Oja, supra* at 193. Wackenhut argues that the contract was not for the benefit of the employees but for Ford's benefit to "capture the reduction of crime-related costs, reduce worker's compensation claims, ensure work force continuation, etc." Nothing in the contract objectively sets out that these are the reasons for the contract. The contract directly speaks about protection of employees and property.

In Michigan, third-party beneficiary law appears well-settled. Contractual language controls the issue. The language of the security contract in this case appears to confer a direct benefit on employees of the plant, an easily defined class of persons. The contract language specifically states that the security guard company *"shall (i) protect buyer's employees and property . . . from any loss, injury, or damage caused by accidents, civil disturbances, explosions, fire, theft, labor disputes, etc., (ii) maintain order among employees and visitors . . ., and (iii) control access to the premises."* An objective review of the contract language compels the conclusion that the employees were directly, not merely incidentally, benefited by the contract and therefore are worthy of third-party beneficiary status. The contract specifically mentions Ford employees and their safety in the first provision of the contract. Wackenhut, the

promisor, undertook to protect employees, maintain order among them, and control access to the premises where they worked. These were obligations directly and knowingly undertaken for the benefit of the employees. There was an express promise by virtue of the use of the word "shall" preceding the specific responsibilities of protecting employees, maintaining order among employees, and controlling access to the premises. In light of the contract language and the current definitions of third-party beneficiary law, the employees of Ford, including Komajda, are third-party beneficiaries of Wackenhut's contract with Ford.

Wackenhut cites to numerous cases outside Michigan in support of its position that Komajda was not a third-party beneficiary of the contract at issue. The case at bar is unlike the numerous cases cited by Wackenhut because the contractual language in this case specifically refers to the protection of employees and does not, by its terms, preclude employees from asserting rights as third-party beneficiaries.[3]

On appeal, Wackenhut relies solely on its third-party beneficiary argument to support its contention that plaintiff's breach of contract claim was not viable. Wackenhut does not raise any other argument with regard to the breach of contract claim. Because the offered argument fails as a matter of law, Wackenhut has failed to establish that summary disposition was erroneously denied or that the case was erroneously submitted to the jury. Accordingly, we must affirm on the breach of contract claim based upon the jury's finding that Wackenhut breached the security contract.[4]

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[3] Only one of the cases cited by Wackenhut truly supports its position that Komajda was not a third-party beneficiary. In *Gardner v Vinson Guard Service, Inc*, 538 So2d 13 (Ala, 1988), the defendant security company had contracted with the plaintiff's employer for the protection of employees. The trial court granted summary judgment in favor of the defendant on all claims, including a breach of contract claim. The appellate court found no contractual duty on the part of the defendant, but gave no explanation for its decision. It is entirely unclear upon what rationale that decision was based. Accordingly, *Gardner* offers no persuasive authority for resolution of the case at bar.

[4] Having determined that Komajda was a third-party beneficiary of the contract between Wackenhut and Ford, and therefore has standing to enforce the contract, our review of the breach of contract claim is concluded. However, we note that the evidence militates strongly against a finding of breach. Wackenhut never promised or guaranteed that it could protect Komajda or other employees from the criminal acts of co-employees or others. The contract is devoid of any language that Wackenhut would protect against criminal acts, foreseen or unforeseen. Further, Wackenhut had no authority to transfer employees away from the plant, order them to work different shifts, or keep them separated in the plant. Wackenhut also had no authority to search every person entering the plant to determine if they were concealing weapons. It was uncontested that Wackenhut was responsible only for spot checks and could detain employees if they appeared intoxicated or irrational or found to have contraband. There was no evidence that anyone observed Belanger entering the plant in an irrational state of mind or with a weapon on the day of the shooting. There was evidence of only one violent incident between Belanger and Komajda about which Ford and Wackenhut were aware. The episode occurred 1-1/2 years before the shooting. Neither Ford nor Wackenhut were aware of the complaints filed with the police department outside of the confines of the work environment. Finding a breach of contract

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C. Voluntary Assumption of Duty Claim:

Wackenhut also argues that the trial court erred in allowing the jury to determine whether Wackenhut voluntarily assumed a duty to Komajda by virtue of Wackenhut's contract with Ford and the Wackenhut guard's assurance that he would "take care of the problem." Notwithstanding Wackenhut's persuasive argument, because of the structure of this case both below and on appeal, our affirmance of the third-party beneficiary issue makes review of the voluntary assumption of duty argument unnecessary.

Plaintiff proceeded on distinct two theories of liability: (1) breach of contract and (2) negligence. Our review of the record indicates that the manner in which the case was submitted to the jury makes it impossible to separate the two bases of liability with respect to damages. The jury instructions, with which defense counsel voiced his satisfaction, did not clearly separate each theory of liability. In contrast, the verdict form clearly delineated the two theories and required findings on both counts. Wackenhut did not object to the verdict form. The transcript of the jury foreperson's reading of the verdict from the verdict form shows that the jury expressly found: (1) that Wackenhut was negligent, (2) that Wackenhut's negligence was a proximate cause of plaintiff's injury, (3) that Wackenhut breached its security contract, (4) that Wackenhut's breach was a proximate cause of plaintiff's injury, and (5) total damages in the amount of $1,750,000. We are unable to determine what amount, if any, was attributable to each theory because the verdict form did not require the jury to apportion damages.

As noted above, with respect to plaintiff's breach of contract claim, Wackenhut challenges only the trial court's determination that plaintiff was a third party beneficiary of the security contract. Accordingly, even if we were to agree with Wackenhut that the negligence theory is unsustainable as a matter of law and should not have been submitted to the jury, we are compelled to affirm because Wackenhut does not challenge the evidence supporting the jury's finding that Wackenhut breached its contract, or that any breach was the proximate cause of Komajda's death.

IV. Wackenhut's Second Issue on Appeal: "Golden Rule" Argument to the Jury

Next, Wackenhut argues that reversal is required because plaintiff made an improper "golden rule" argument to the jury by asking the jurors to put themselves into the shoes of the plaintiff or to trade places with the plaintiff. This issue is not preserved because Wackenhut failed to object to the statements about which it now complains. *Harvey v Security Services, Inc,* 148 Mich App 260; 384 NW2d 414 (1986). Although Wackenhut objected to the closing

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under these circumstances is akin to holding Wackenhut strictly liable for the physical harm suffered by Komajda. However, Wackenhut fails to argue that JNOV or a directed verdict should have been granted on the breach of contract claim. Wackenhut also fails to argue that the breach of contract verdict was against the great weight of the evidence such that a new trial should be granted.

argument in its new trial motion, this objection was not timely such that the issue is preserved. A timely objection is one that is made in sufficient time for the trial court to correct the alleged error. *O'Donnell v HJ Van Hollenbeck Leasing, Inc*, 12 Mich App 536, 539; 163 NW2d 280 (1968). See *Phillips v Mazda Motor Mfg (USA) Corp*, 204 Mich App 401, 413; 516 NW2d 502 (1994).

Where a defendant fails to object at trial to statements made during closing argument, appellate review is precluded unless the failure to do so would result in a miscarriage of justice. *Snell v UACC Midwest, Inc*, 194 Mich App 511, 517; 487 NW2d 772 (1992); *Cook v City of Detroit*, 125 Mich App 724, 736-737; 337 NW2d 277 (1983). "Only where the comments by counsel alleged to be prejudicial evidence a studied purpose to inflame or prejudice a jury will this Court reverse the jury's ultimate verdict." *Anderson v Harry's Army Surplus, Inc*, 117 Mich App 601, 615; 324 NW2d 96 (1982).

A "golden rule" argument is an argument wherein the plaintiff's counsel asks the jury to assess damages on the basis of what they would be willing to accept for the wrongs alleged to have been suffered. *May v Parke, Davis & Co*, 142 Mich App 404, 423; 370 NW2d 371 (1985); *Anderson, supra* at 616. In this case, plaintiff's counsel argued, in relevant part:

> What's the value for two teenagers aged 14 and 18, losing their sole parent and provider, the person who guides them and nutures [sic] them into adulthood. Their damages, which you have heard are undisputed. They have suffered a huge loss and will never reclaim that loss regarding their mother's love and affection. They have suffered and will continue to suffer for the rest of their lives emotional difficulties that I suggest will be extreme. *I can't imagine anyone would want to trade places with either Carl or Melanie for a million dollars. That expression is applicable to this case, and it is my belief that each of these children deserve your consideration of that sum of money.* You can give more, you can give less, use your best collective judgment. [Emphasis added.]

We conclude that the argument was an improper golden rule argument because plaintiff's counsel essentially asked the jury to assess damages in a certain amount based on whether they would be willing to trade places with Komajda's children. The argument specifically caused the jurors to at least consider what amount of money they would be willing to accept if they were the decedent's children. However, the argument was fleeting and not repeated. There did not appear to be a studied attempt to inflame or prejudice the jury. It appears that counsel was trying to explain to the jury that, although the amount of money being requested was considerable, it could not begin to replace what the decedent's children had lost.

Reversal on this issue is not warranted. In *Anderson, supra*, this Court declined to reverse where some of the plaintiff's arguments violated the "golden rule." This Court held that the comments were not a studied attempt to inflame the jury but were an overzealous attempt to express the damages in practical terms. *Id.* In the case at bar, we find that failure to review this unpreserved issue will not result in a miscarriage of justice.

V. Wackenhut's Third Issue on Appeal: Plaintiff's Use of Statutory Mortality Tables

Lastly, Wackenhut argues that plaintiff improperly used the statutory mortality tables which had been repealed in 1994 resulting in an unfair jury verdict which was based on jury instructions which were manifestly unjust. This issue is not preserved. It was never raised before or decided by the trial court.

> The rule is well settled that to preserve a claim of error in jury instructions for appellate review, an objection must be made before the jury begins its deliberations, and the basis for the claim of error should be stated with specificity.
>
> Responsibility for detecting and correcting error is shared by the court and counsel. The interest in conserving judicial resources requires that the trial judge should be provided the opportunity to correct an inaccurate instruction before submitting the case to the jury. It is more efficient to prevent instructional deficiency than to look to the appellate courts to correct the deficiency by remanding for another trial.
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> The interests of "judicial economy" are best served by requiring counsel to preserve objections to instructions specifically. Otherwise counsel could remain silent in the face of deficiencies that are correctable before the case goes to the jury. [*Riddle v McLouth Steel Products Corp*, 440 Mich 85, 111-114; 485 NW2d 676 (1992).]

Here, Wackenhut agreed to the use of the statutory mortality table instruction, which had not yet been deleted. Wackenhut also failed to object to the instructions as given and failed to request an alternative instruction for dealing with the damage issue. Accordingly, Wackenhut has waived any claim of error in this regard, and we decline to review the issue. *Leavitt v Monaco Coach Corp*, 241 Mich App 288, 300; 616 NW2d 175 (2000).

Affirmed.

/s/ Donald S. Owens
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Talbot