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Will the Public Policy Exception to the Employment-at-Will Doctrine Ever Be Clear? - Amos v. Oakdale Knitting Co.

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NOTE

WILL THE PUBLIC POLICY EXCEPTION TO THE EMPLOYMENT-AT-WILL DOCTRINE EVER BE CLEAR? — *Amos v. Oakdale Knitting Co.*

INTRODUCTION

The employment at-will doctrine is firmly entrenched in North Carolina law.[1] This doctrine provides that absent a contractual agreement between an employer and employee that establishes a definite term of employment, the employment is presumed to be at-will.[2] Employment at-will allows the employer to discharge the employee with or without cause.[3] Despite North Carolina's commitment to the employment at-will doctrine, this doctrine has been eroded in recent years by both the legislature and the judiciary. Several statutes were enacted to prohibit employers from discharging at-will employees in retaliation for certain protected activities.[4] The North Carolina Court of Appeals also developed a limited public policy exception to the at-will rule.[5] In *Coman v. Thomas Manufacturing Co.*,[6] the North Carolina Supreme Court stretched this exception by broadly defining public policy. In *Amos v. Oakdale Knitting Co.*,[7] the North Carolina Court of Appeals

1. Haburjak v. Prudential Bache Sec., Inc., 759 F. Supp. 293, 299 (W.D.N.C. 1991).

2. Still v. Lance, 279 N.C. 254, 259, 182 S.E.2d 403, 406 (1971).

3. Smith v. Ford Motor Co., 289 N.C. 71, 80, 221 S.E.2d 282, 288 (1976).

4. Filing workers' compensation claims, N.C. GEN. STAT. § 97-6.1 (1985); engaging in labor disputes, N.C. GEN. STAT. § 95-83 (1985); filing Occupational Safety and Health Act claims, N.C. GEN. STAT. § 95-103(8) (1985).

5. *See* Williams v. Hillhaven Corp., 91 N.C. App. 35, 370 S.E.2d 423 (1988) (employer could not discharge employee who testified truthfully in response to a subpoena); Sides v. Duke Univ., 74 N.C. App. 331, 328 S.E.2d 818 (1985) (employer could not discharge employee who refused to commit perjury), *disc. review denied*, 314 N.C. 331, 333 S.E.2d 490 (1985).

6. 325 N.C. 172, 381 S.E.2d 445 (1989).

7. 102 N.C. App. 782, 403 S.E.2d 565 (1991).

helped define the parameters of the public policy exception to the employment at-will doctrine. The court held that the public policy exception could not be extended to prevent an employer from discharging employees who refused to work for less than minimum wage.[8] The court in *Amos* determined that the discharged employees could not bring a wrongful termination claim, but instead were limited to whatever statutory rights they might have.[9] The court refused to extend the exception to provide a cause of action in addition to a statutory remedy.[10] Thus, the decision in *Amos* narrowed the public policy exception.

This Note will trace the cases following *Coman* and the confusion among the North Carolina courts in determining an employer's liability for discharging an at-will employee. Next, this Note will explain the rationale behind those decisions and how the court of appeals arrived at its holding in *Amos*. This Note will also show how the *Amos* decision can be reconciled with other case law in North Carolina. Finally, this Note will conclude with issues for attorneys to consider before pursuing a wrongful discharge claim based on the public policy exception.

THE CASE

Plaintiffs Sharon Amos, Kathy Hall, and Earline Marshall were employed by defendant Oakdale Knitting Company.[11] After completing work one week, plaintiffs learned that their hourly wage had been reduced to $1.17 below the North Carolina minimum wage.[12] They complained to their supervisor who referred them to defendant Walter Mooney, an owner of the defendant company.[13] Mooney gave the plaintiffs a choice: they could work at the reduced pay rate or they would be fired.[14] When plaintiffs refused to work, their employment was terminated.[15]

Plaintiffs filed suit, basing their wrongful discharge claim on the employer's violation of the North Carolina Wage and Hour Act.[16] The lower court dismissed the plaintiffs' complaint for fail-

8. *Id.*
9. *Id.*
10. *Id.* at 784, 403 S.E.2d at 567-568.
11. *Id.* at 783, 403 S.E.2d at 566.
12. *Id.*
13. *Id.*
14. *Id.*
15. *Id.*
16. *Id.*; *see also* N.C. GEN. STAT. §§ 95-25.1 - 95-229 (1985).

ure to state a claim upon which relief could be granted.[17] While admitting that the discharges violated the public policy of North Carolina, the trial judge stated that under the appellate court's decision in *Coman v. Thomas Manufacturing Co.*,[18] the public policy exception was limited to where an employer attempts to interfere with testimony in a legal proceeding.[19]

After the North Carolina Supreme Court reversed the decision in *Coman*, the plaintiffs in *Amos* appealed their decision.[20] On appeal, plaintiffs contended that the North Carolina Supreme Court adopted a broader public policy exception by reversing the court of appeals' decision in *Coman*.[21] Therefore, the plaintiffs argued that their complaint stated a claim for relief for wrongful termination.[22] The court of appeals rejected this claim and held that the public policy exception could not be extended to permit an action for wrongful discharge where the plaintiffs already had a statutory remedy.[23]

BACKGROUND

Until the North Carolina Court of Appeals' decision of *Sides v. Duke University*,[24] North Carolina strictly adhered to the employment at-will doctrine.[25] This doctrine provides that an em-

17. *Amos*, 102 N.C. App. at 783, 403 S.E.2d at 566. Dismissal was pursuant to N.C. R. CIV. P. 12(b)(6).

18. 91 N.C. App. 327, 371 S.E.2d 731 (1988).

19. *Amos*, 102 N.C. App. at 784, 403 S.E.2d at 566.

20. *Id.*

21. *Id.*

22. *Id.* at 784, 403 S.E.2d at 567. Although defendants contended that plaintiffs' action was preempted by the federal Fair Labor Standards Act, 29 U.S.C. §§ 201 - 219, the court refused to address the issue since it was not raised before the lower court. *Amos*, 102 N.C. App. at 784, 403 S.E.2d at 566.

23. *Amos*, 102 N.C. App. at 786, 403 S.E.2d at 568. The court of appeals also stated:

> by this opinion we do not in any way condone an employer's violation of the minimum wage law with the resultant hardship and inconvenience to its employees, and we expressly denounce such unlawful coercive attempts to deprive employees of the wages to which they are lawfully entitled.

Id. at 786, 403 S.E.2d at 567.

24. 74 N.C. App. 331, 328 S.E.2d 818 (1985), *disc. review denied*, 314 N.C. 331, 335 S.E.2d 13 (1985).

25. *See, e.g.*, Harris v. Duke Power Co., 319 N.C. 627, 356 S.E.2d 357 (1987); Presnell v. Pell, 298 N.C. 715, 260 S.E.2d 611 (1979); Smith v. Ford Motor Co., 289 N.C. 71, 221 S.E.2d 282 (1976); Still v. Lance, 279 N.C. 254, 182 S.E.2d 403 (1971).

ployer or employee can terminate the employment relationship at will in the absence of a contract fixing a definite period of employment.[26] The *Sides* court judicially created a public policy exception to the at-will rule, by recognizing a cause of action for wrongful discharge when an employer terminates an at-will employee "for an unlawful reason or purpose that contravenes public policy."[27] The North Carolina Legislature also modified the doctrine by creating exceptions for certain retaliatory discharges.[28]

Following the *Sides* decision, the courts strictly construed the public policy exception by limiting it to the same facts in *Sides*. Thus, the public policy exception applied only where an employer discharged its employee for refusing to commit perjury.[29] As a result, only one other discharged employee was successful in bringing a wrongful discharge claim based on the public policy exception.[30] Expressing dismay over the impact of *Sides*, one commentator stated, "[w]hile *Sides* opened the door to wrongful discharge in North Carolina, the subsequent cases have sorely missed the mark."[31]

Eventually, the North Carolina Supreme Court extended the *Sides* public policy exception in *Coman v. Thomas Manufacturing*

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26. Note, *Coman v. Thomas Mfg. Co.: Recognizing a Public Policy Exception to the At-Will Employment Doctrine*, 68 N.C.L. REV. 1178, 1181 (1990).

27. *Sides*, 74 N.C. App. at 342, 328 S.E.2d at 826.

28. An employer cannot terminate an employee for filing for workers' compensation, N.C. GEN. STAT. § 97-6.1 (1985), involvement in labor disputes, *id.* § 95-83 (1985), filing OSHA claims, *id.* § 95-130(8), filing wage and hour complaints, *id.* § 96-25(20), or testifying at an unemployment compensation hearing, *id.* § 96-15.1.

29. Note, *supra* note 26, at 1186-87. *See* Hogan v. Forsyth Country Club, 79 N.C. App. 483, 340 S.E.2d 116 (1986) (employee who was discharged for refusing to accede to sexual demands of a more favored employee did not fall within the *Sides* exception), *disc. review denied*, 317 N.C. 334, 346 S.E.2d 140 (1986); Trought v. Richardson, 78 N.C. App. 758, 338 S.E.2d 617 (1986) (employee who was discharged for complying with statute did not fall within the *Sides* exception), *disc. review denied*, 316 N.C. 557, 344 S.E.2d 18 (1986); Walker v. Westinghouse, 77 N.C. App. 253, 335 S.E.2d 79 (1985) (employee who was discharged for raising safety concerns in the workplace did not fall within the *Sides* exception) *disc. review denied*, 315 N.C. 597, 341 S.E.2d 39 (1986).

30. *See* Williams v. Hillhaven Corp., 91 N.C. App. 35, 370 S.E.2d 423 (1988) (employee was discharged for testifying truthfully in response to a subpoena).

31. McGuiness, *The Doctrine of Wrongful Discharge in North Carolina: The Confusing Path From Sides to Guy and the Need for Reform*, 10 CAMPBELL L. REV. 217, 246 (1988).

Co.[32] The court in *Coman* held that an at-will employee, who was discharged for refusing to operate a truck in violation of federal law, had stated a cause of action for wrongful discharge based on the public policy exception.[33] The court noted that public policy has been defined as "the principle of law which holds that no citizen can lawfully do that which has a tendency to be injurious to the public or against the public good."[34] The supreme court went further to state that "bad faith conduct should not be tolerated in employment relations, just as it is not accepted in other commercial relationships."[35] Since the court defined public policy broadly and discussed "bad faith," the scope of its exception was feared too large.[36]

However, after *Coman*, the court of appeals decided the case of *McLaughlin v. Barclays American Corp.*[37] in which the court interpreted *Coman* narrowly. The plaintiff in *McLaughlin* claimed that he was fired for attempting to defend himself when another employee punched him in the chest.[38] The court held that McLaughlin's discharge did not fall within the public policy exception.[39] In reaching its decision, the court focused on the previous

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32. 325 N.C. 172, 381 S.E.2d 445 (1989).

33. *Id.* at 175, 381 S.E.2d at 447.

34. *Id.* at 175 n.2, 381 S.E.2d at 447 n.2 (quoting Petermann v. International Bhd. of Teamsters, 174 Cal. App. 2d 184, 344 P.2d 25 (1959)).

35. *Coman*, 325 N.C. at 177, 381 S.E.2d at 448.

36. The dissenting justice argued that the majority's decision "may indeed have an effect on the economic vitality of our state, particularly on the recruitment of new industry." *Coman*, 325 N.C. at 184, 381 S.E.2d at 452 (1991) (Meyer, J., dissenting).

One commentator noted that "the supreme court has created an overly broad public policy exception and bad faith exception that will encourage numerous plaintiff-employee lawsuits and increase the cost of doing business to employers." Note, *supra* note 26, at 1178.

37. 95 N.C. App. 301, 382 S.E.2d 836 (1989).

38. *Id.* at 303, 382 S.E.2d at 838. McLaughlin had counseled another Barclays employee about his work performance. After the employee became argumentative, McLaughlin tried to leave the room. The employee punched McLaughlin in the chest. In order to defend himself, McLaughlin threw up his right hand and struck the employee on the side of the face. Barclays conducted no formal investigation of the altercation nor had it responded to previous requests from McLaughlin for assistance in dealing with the employee. Five days after the altercation, Barclays terminated McLaughlin's employment, offering no explanation. *Id.* at 303-304, 382 S.E.2d at 837-838.

39. *Id.* at 307, 382 S.E.2d at 840.

cases in which the public policy exception had been applied.[40] The court noted that those cases involved employers who affirmatively instructed the employees to violate the law and were concerned with the potential harm to the public if those instructions were obeyed.[41] The *McLaughlin* court simply did not believe similar public policy implications were present in the case before it.[42]

The next development in the *Coman* public policy exception occurred in *Harrison v. Edison Brothers Apparel Stores, Inc.*[43] The plaintiff was discharged for refusing her employer's request for sex.[44] She argued that her discharge was in bad faith and fell within the public policy exception of *Coman* since the employer's sexual harassment constituted a violation of federal and state public policy.[45] The federal district court stated that North Carolina courts would rule that the public policy exception requires two factors: (1) that the discharge violates some well established public policy; and (2) there be no remedy to protect the interest of the aggrieved employee or society.[46] Since the plaintiff had a remedy available under Title VII, the court held that the discharge did not fall within the public policy exception.[47]

The plaintiff appealed the district court's decision to the United States Court of Appeals, Fourth Circuit.[48] This court reversed the district court, holding that the plaintiff stated a cause of action for wrongful discharge because she was asked to commit an act prohibited by criminal law.[49] The court also objected to the two factor "test" used by the district court in determining whether the

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40. *Id.* at 306, 382 S.E.2d at 839.

41. *Id.* at 306, 383 S.E.2d at 840.

42. *Id.*

43. 724 F. Supp. 1185 (M.D.N.C. 1989).

44. *Id.* at 1192.

45. *Id.*

46. *Id.* at 1193.

47. *Id.* The court also cited cases that refused to extend a common law tort remedy for reasons of public policy where the law already provided some protection against wrongful discharge: Lapindad v. Pacific Oldsmobile-GMC, Inc., 679 F. Supp. 991, 993 (D. Haw. 1988); Salazar v. Furr's Inc., 629 F. Supp. 1403, 1408 (D. N.M. 1986); Wehr v. Burroughs Corp., 438 F. Supp. 1052, 1054 (E.D. Pa. 1977). *Harrison*, 724 F. Supp. at 1192.

48. Harrison v. Edison Bros. Apparel Stores, Inc., 924 F.2d 530 (4th Cir. 1991).

49. *Id.* at 534. The court stated "[w]e think it apparent that the exchange of sexual intercourse for the valuable economic benefit of a job fits within North Carolina's criminal prohibition" of prostitution. *Id.*

public policy exception should apply.[50] Although the court had no objection to the first factor, it found no North Carolina authority for the second.[51] The court noted that the employee in *Coman* had a remedy in federal court, but that the North Carolina Supreme Court deemed that fact irrelevant in recognizing the existence of a state remedy.[52]

A recent case addressing the public policy exception examined the legal consequences when an employee is fired for performing an act required by law.[53] While working as a broker, plaintiff reported to his employer that other employees were engaging in insider trading.[54] Soon after this revelation, the employer discharged the plaintiff.[55] Since the law requires brokers to disclose the existence of insider trading, plaintiff argued that the *Coman* exception should also apply when an employee is fired for doing that which is required by law.[56]

The federal district court, however, held that the public policy exception was limited to situations where an employer affirmatively instructs an employee to violate the law.[57] The court also noted that the "bad faith" language of *Coman* was "unfortunate and destined to lead to the inclusion of a wrongful discharge claim to virtually every employment termination lawsuit."[58] Surprisingly however, the courts have not focused on the "bad faith" language in *Coman*, but instead have based the exception on public policy grounds.[59]

ANALYSIS

In *Amos*, the North Carolina Court of Appeals had a second opportunity to determine the breadth of the public policy excep-

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50. *Id.* at 533.

51. *Id.*

52. *Id.*

53. Haburjak v. Prudential Bache Sec., Inc., 759 F. Supp. 293 (W.D.N.C. 1991).

54. *Id.* at 294.

55. *Id.*

56. *Id.*

57. *Id.* at 301.

58. *Id.* at 300.

59. *See* Amos v. Oakdale Knitting Co., 102 N.C. App. 782, 403 S.E.2d 565 (1991); *Haburjak*, 759 F. Supp. 293; Harrison v. Edison Bros. Apparel Stores, Inc., 924 F.2d 530 (4th Cir. 1991); and McLaughlin v. Barclays American Corp., 95 N.C. App. 301, 382 S.E.2d 836 (1989).

tion articulated in *Coman*.[60] The court held that the public policy exception could not be extended to provide a cause of action for wrongful discharge when the discharged employee already had a statutory remedy.[61] While acknowledging that payment of the minimum wage is the public policy of North Carolina, the court pointed out that the legislature had provided a remedy for employees who were not paid according to the Wage and Hour Act.[62] The court distinguished this case from *Coman* by noting that the plaintiff in *Coman* did not have an available statutory remedy in the North Carolina court.[63]

The court of appeals' rationale focused on the fact that the employees were not asked to engage in unlawful conduct and that the employer's violation of the Wage and Hour Act did not pose a serious threat to the public's safety.[64] The court also considered the purpose of the Wage and Hour Act which is to allow employees to earn acceptable wages without jeopardizing the competitive position of North Carolina business and industry.[65]

In citing cases that support limiting the public policy exception to those instances when an employee has no statutory redress, the court in *Amos* indicated that it agreed with the district court's "two factor test" in *Harrison*.[66] The *Amos* court cited *Wehr v. Burroughs Corp.*[67] and quoted the following language from that opinion: "application of the public policy exception requires two

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60. The court had its first opportunity in McLaughlin v. Barclays American Corp., 95 N.C. App. 301, 382 S.E.2d 836 (1989).

61. *Amos*, 102 N.C. App. at 785-787, 403 S.E.2d at 567-68. The dissenting justice agreed that plaintiffs did not have a cause of action for wrongful termination, but he would have reversed the dismissal to permit the plaintiffs to pursue their remedy under N.C. GEN. STAT. § 95-25.22. *Id.* at 787, 403 S.E.2d at 568.

62. *Amos*, 102 N.C. App. at 785, 403 S.E.2d at 567. N.C. GEN. STAT. § 95-25.22 allows an employee to maintain an action in the general court of justice to recover unpaid minimum wages plus interest, and allows the court to award exemplary damages in the amount of the recovery and to award costs and reasonable attorneys' fees to the employee. N.C. GEN. STAT. § 95-25.22 (a),(b),(d) (1985).

63. *Amos*, 102 N.C. App. at 785, 403 S.E.2d at 567. The supreme court in *Coman* stated that while plaintiff had a possible remedy in the federal courts, the open courts clause of the North Carolina Constitution (N.C. CONST. art. I, § 18) required the court to provide a forum to determine a valid cause of action. Coman v. Thomas Manufacturing Co., 325 N.C. 172, 174, 381 S.E.2d 445, 446 (1989).

64. *Amos*, 102 N.C. App. at 786, 403 S.E.2d at 567.

65. *Id.*

66. 724 F. Supp. 1185 (M.D.N.C. 1989).

67. 438 F. Supp. 1052 (E.D. Pa. 1977), *aff'd as modified*, 619 F.2d 276 (3d Cir. 1980).

factors: (1) that the discharge violate some well-established public policy; and (2) that there be no remedy to protect the interest of the aggrieved employee or society."[68] Since the employees in *Amos* had a statutory remedy, the public policy exception could not apply.

While the *Amos* court attempted to help define the parameters of the public policy exception, it left many questions still unanswered. For example, the court did not have to determine whether the employer's violation of the Wage and Hour Act was a violation of public policy.[69] Thus, the question of what constitutes a discharge that violates public policy remains unclear. From the cases that have addressed the employment at-will doctrine so far, it appears that the exception is limited to those policies supported by criminal statutes and regulations.[70] One court recently noted that a question remains as to whether the exception could apply when the employee is fired for refusing to perform a non-criminal act that violates public policy.[71]

Also, the question of whether industry standards or rules of ethical conduct could serve as sources of public policy has not been determined.[72] Furthermore, the courts have left open the question whether violations of federal public policy can form the basis for a wrongful discharge action in state courts, provided that the employee has no statutory protection.[73]

As seen from the cases following *Coman*, the North Carolina courts are trying to adhere to the employment at-will doctrine by

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68. *Amos*, 102 N.C. App. at 787, 403 S.E.2d at 568.

69. *Id.* at 787, 403 S.E.2d at 567-68. N.C. GEN. STAT. § 95-25.1(b) states: "The public policy of this State is declared as follows: The wage levels of employees, hours of labor, payment of earned wages, and the well-being of minors are subjects of concern requiring legislation." N.C. GEN. STAT. § 95-25.1(b) (1985).

70. Such reasoning would explain why the plaintiff in *McLaughlin*, who did not cite any statutes or regulations, was unsuccessful in his wrongful discharge suit.

71. Percell v. International Business Machs., Inc., 765 F. Supp. 297 (E.D.N.C. 1991).

72. *See* Note, *supra* note 26, at 1188.

73. In *Coman*, the supreme court expressly stated that it did not base its opinion upon federal public policy but that many courts have allowed wrongful discharge claims based on violations of federal public policy. Coman v. Thomas Mfg. Co., 325 N.C. 172, 178, 381 S.E.2d 445, 449 (1989). In the cases cited, however, the federal statutes did not provide protection for a wrongful discharge. Harrison v. Edison Bros. Apparel Stores, Inc., 724 F. Supp. 1185, 1193 (M.D.N.C. 1989).

restricting the application of the public policy exception. The United States Court of Appeals, Fourth Circuit, applied the exception in *Harrison* and has been the only court to do so since the *Coman* decision.[74] The *Harrison* court provided the plaintiff a cause of action for wrongful discharge in addition to a remedy under Title VII.[75] This result is directly opposite the North Carolina Court of Apppeals' decision in *Amos* to the extent that the public policy exception did not extend to afford a cause of action when the employees had a statutory remedy.[76] Even so, these two cases can be reconciled by looking carefully at the fact situations.

In *Harrison*, the plaintiff was asked to commit an act prohibited by the criminal law,[77] whereas the plaintiffs in *Amos* were not asked to violate the law.[78] This difference is an important one since it appears that courts do not want to alter the employment at-will doctrine any more than is necessary to protect the public welfare.[79] The primary reason for the judicial exception was to discourage employers from forcing their employees to choose between breaking the law or losing their job.[80] Another factual difference between the two cases was that the plaintiff in *Harrison* had a federal remedy,[81] while the plaintiffs in *Amos* had a state remedy.[82] Evidently, the courts do not believe they are justified to act as "super-legislatures" and provide an additional state remedy. Whereas, when a plaintiff has only a federal remedy, the courts are more inclined to

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74. Harrison v. Edison Bros. Apparel Stores, Inc., 924 F.2d 530 (4th Cir. 1991).

75. *Id.* at 533.

76. Amos v. Oakdale Knitting Co., 102 N.C. App. 782, 786, 403 S.E.2d 565, 567-68 (1991).

77. *Harrison*, 924 F.2d at 534.

78. *Amos*, 102 N.C. App. at 786, 403 S.E.2d at 568.

79. *See* McLaughlin v. Barclay Am. Corp., 95 N.C. App. at 301, 306, 382 S.E.2d 836, 840 (1989) (court stated, "[w]e do not perceive the kind of deleterious consequences for the general public, if we uphold Barclays' action, as might have resulted from decisions favorable to the employers in *Sides* and *Coman*").

80. *See* Coman v. Thomas Mfg. Co., 325 N.C. 172, 176, 381 S.E.2d 445, 447-48 (1989) (court stated, "[w]e find it is in the best interest of the state on behalf of its citizens to encourage employees to refrain from violating. . .public policy at the demand of their employers. Providing employees with a remedy should they be discharged for refusing to violate . . . public policy supplies that encouragement").

81. Harrison, 924 F.2d at 533. The court recognized that there is no North Carolina statute analogous to Title VII. *Id.*

82. *Amos*, 102 N.C. App. at 785, 403 S.E.2d at 567.

provide a state remedy.[83]

In a case following *Amos*, the plaintiff argued that his termination was in violation of North Carolina's public policy against race discrimination as embodied in the North Carolina Equal Employment Practices Act.[84] The district court held that there is no evidence that the North Carolina courts would expand the public policy exception to apply in almost every employment discrimination suit.[85] The state courts would probably agree with this decision since the employer's action was not a violation of a criminal statute and provided that the employee had a statutory remedy. Such a result would also prevent the exception from swallowing the rule.

Perhaps the North Carolina Court of Appeals' reluctance to apply the public policy exception in *Amos* stems from its desire to promote industry and development in North Carolina. If an employee prevails on a wrongful discharge claim, he can recover compensatory and punitive damages that are unavailable under the statutory provisions.[86] Thus, an employee can receive a substantially larger damage award in a wrongful discharge case.[87] Clearly, the court is protecting employers' interests by narrowly interpreting the *Coman* decision so as to prevent employees from bringing a wrongful discharge claim.

The *Amos* decision, in effect, insulates employers from wrongful discharge claims when they pay employees less than minimum wage. Employers risk only having to pay the discharged employees the difference between the minimum wage and the actual wage paid.[88] Meanwhile, an employee must take the initiative of hiring a lawyer and filing suit against the employer.

The *Amos* court determined that the plaintiffs' two options were (1) to continue working and pursue their statutory remedy,

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83. *See* Coman, 325 N.C. at 174, 381 S.E.2d at 446 (court stated, "[a]lthough plaintiff may have some additional remedy in the federal courts, the courts of North Carolina cannot fail to provide a forum to determine a valid cause of action").

84. Percell v. International Business Machs., Inc., 765 F. Supp. 297 (E.D.N.C. 1991).

85. *Id.*

86. McGuiness, *supra* note 31, at 234.

87. *See id.* at 235.

88. Employers would also pay interest on the difference and might have to pay exemplary damages in the amount of the recovery as well as costs and attorneys' fees. N.C. GEN. STAT. § 95-25.22 (1985).

which would have made them whole, or (2) to refuse to work and be fired.[89] However, the court failed to consider that the employees may have been unaware of their statutory remedy until after they were discharged and had consulted a lawyer. If that were the case, it was unfortunate that the plaintiffs had to suffer the consequence of losing their jobs.

CONCLUSION

The North Carolina Court of Appeals re-examined the public policy exception to the employment at-will doctrine in the *Amos* case. The court held that the exception could not extend to provide a cause of action for wrongful discharge when the discharged employee already had a statutory remedy. After *Amos* it appears that when an employee has been discharged in violation of public policy and there is no statutory remedy available, the courts will apply the public policy exception to allow a cause of action for wrongful discharge.

As long as business exists, North Carolina courts will continue to balance employers' freedom to hire and fire with employees' desire to maintain employment. Attorneys should be aware that pursuing statutory remedies are a wrongfully discharged employee's safest bet. It is also important for attorneys to note that courts which have applied the public policy exception have done so only in cases where an employer requested an employee to perform an act harmful to the public interest. While the holding in *Amos* helped define the contours of the public policy exception, the court left many questions unanswered. Thus, until more cases are heard, an employer's liability for wrongful discharge in violation of public policy remains unclear.

Victoria W. Shelton

89. Amos v. Oakdale Knitting Co., 102 N.C. App. 782, 786, 403 S.E.2d 565, 567 (1991).