

9-1-1990

Coman v. Thomas Manufacturing Co.: Recognizing a Public Policy Exception to the At- Will Employment Doctrine

Duncan Alford

Follow this and additional works at: <http://scholarship.law.unc.edu/nclr>Part of the [Law Commons](#)

Recommended Citation

Duncan Alford, *Coman v. Thomas Manufacturing Co.: Recognizing a Public Policy Exception to the At-Will Employment Doctrine*, 68 N.C. L. REV. 1178 (1990).Available at: <http://scholarship.law.unc.edu/nclr/vol68/iss6/11>

This Note is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

Coman v. Thomas Manufacturing Co. : Recognizing a Public Policy Exception to the At-Will Employment Doctrine

The Supreme Court of North Carolina has adhered steadfastly to the at-will employment doctrine when resolving disputes between employers and employees.¹ Recently, in *Coman v. Thomas Manufacturing Co.*² the North Carolina Supreme Court recognized a newly broadened public policy exception to the at-will employment doctrine and created a cause of action for wrongful discharge based on this new theory.³ The court, by expanding this exception to the at-will employment doctrine, followed the trend of other jurisdictions and afforded employees relief for discharge by employers whose conduct violates the state's public policy.⁴

This Note will analyze the changes in the at-will employment doctrine in North Carolina. The Note will discuss *Sides v. Duke University*,⁵ which created a limited public policy exception. The Note will then examine *Coman*, which by expanding the public policy exception and creating a bad faith exception, significantly changed employment law in North Carolina. This Note concludes that the Supreme Court of North Carolina 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 for employers.

Mark Coman was first employed by Thomas Manufacturing as a long distance truck driver in 1978.⁶ In 1984 plaintiff Coman was hired as a full-time employee and hauled goods in defendant's trucks to locations within the United States and Canada.⁷ Defendant's operations were governed by the United States Department of Transportation regulations.⁸ According to these regulations, a truck driver must rest eight hours for every ten hours of driving time.⁹ In addition, the driver must maintain accurate logs of his driving time.¹⁰ North Carolina regulations impose identical requirements.¹¹ Defendant employer informed plaintiff, however, that he would be required to drive for periods in excess of

1. *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).

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

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

4. The dissent in *Coman* pointed out that California, the jurisdiction that led the creation of the tort of wrongful discharge in *Petermann v. International Bhd. of Teamsters*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959), has since retreated from its broad treatment of the tort, restricting its applicability in *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 765 P.2d 373, 254 Cal. Rptr. 211 (1988). *Coman*, 325 N.C. at 185-86, 381 S.E.2d at 453 (Meyer, J., dissenting).

5. 74 N.C. App. 331, 328 S.E.2d 818, *disc. rev. denied*, 314 N.C. 331, 335 S.E.2d 13 (1985).

6. *Coman*, 325 N.C. at 173, 381 S.E.2d at 445.

7. *Id.*

8. *Id.* at 173, 381 S.E.2d at 446.

9. *Id.*; 49 C.F.R. § 395.7 (1988).

10. 49 C.F.R. § 395.8 (1988).

11. The North Carolina General Assembly authorized the Division of Motor Vehicles to promulgate safety regulations for motor carriers in North Carolina. N.C. GEN. STAT. § 20-384 (1988). The Division of Motor Vehicles adopted the rules and regulations promulgated by the federal Department of Transportation. N.C. ADMIN. CODE tit. 19A, r. 3D.0801 (Feb. 1988).

those allowed by federal and state regulations and would also be required to falsify his log so defendant would not be penalized for violating the regulations.¹² Plaintiff refused to falsify his records or drive in excess of the time allowed by the regulations.¹³ Defendant then threatened to reduce plaintiff's salary by fifty percent,¹⁴ "such reduction being tantamount to a discharge of plaintiff."¹⁵

Plaintiff filed suit, basing his wrongful discharge claim on a public policy theory.¹⁶ The district court dismissed the complaint, ruling that it failed to state a claim for relief.¹⁷ The North Carolina Court of Appeals affirmed the trial court's decision,¹⁸ holding that the facts of the case did not fall within the public policy exception created by *Sides v. Duke University*.¹⁹ The appellate court further held that the remedy allowed under federal law provided plaintiff adequate relief.²⁰

The Supreme Court of North Carolina reversed, finding that the facts of *Coman* fell within the *Sides* public policy exception.²¹ Moreover, the court broadened the public policy exception beyond that originally conceived by the court of appeals in *Sides*.²² The supreme court pointed out that the safety of travel on the highways of the state is of paramount concern to the state government and that, as a result, the state legislature has regulated travel on the state's highways extensively.²³ According to the court, the employer's act of firing plaintiff for refusing to violate the federal and state regulations violated the state's public policy of promoting highway safety.²⁴ The court noted that *Coman* confronted the dilemma of losing his job or risking imprisonment for violating the regulations.²⁵ Because the state has a strong interest in encouraging "employees to refrain from violating [the state's] public policy at the demand of

12. *Coman*, 325 N.C. at 173, 381 S.E.2d at 446.

13. *Id.* at 173-74, 381 S.E.2d at 446.

14. *Id.* at 174, 381 S.E.2d at 446.

15. *Id.* Because the court limited its holding to recognition of the wrongful discharge cause of action, it was not necessary to determine whether plaintiff's salary was actually reduced.

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

17. *Id.* at 173, 381 S.E.2d at 445.

18. *Coman v. Thomas Mfg. Co.*, 91 N.C. App. 327, 334-35, 371 S.E.2d 731, 736 (1988), *rev'd*, 325 N.C. 172, 381 S.E.2d 445 (1989).

19. *Id.* at 332-33, 371 S.E.2d at 734-35 (citing *Sides v. Duke Univ.*, 74 N.C. App. 331, 328 S.E.2d 818, *disc. rev. denied*, 314 N.C. 331, 335 S.E.2d 13 (1985)). For a discussion of the public policy exception created by *Sides*, see *infra* notes 64-85 and accompanying text.

20. *Coman v. Thomas Mfg. Co.*, 91 N.C. App. 327, 334-35, 371 S.E.2d 731, 736 (1988), *rev'd*, 325 N.C. 172, 381 S.E.2d 445 (1989). The supreme court in *Coman* referred to the "constitutional issue of preemption by the federal government under the supremacy clause," but did not address the issue because it was not raised in a lower court. *Coman*, 325 N.C. at 174 n.1, 381 S.E.2d at 446 n.1. Federal law prohibits discharge for refusing to violate these regulations. 49 U.S.C. § 2305(a)-(b) (1982). Plaintiff must file a complaint with the Secretary of Labor within 180 days after the alleged violation. 49 U.S.C. § 2305(c)(1) (1982). Plaintiff's remedy may include an order for employer to abate the unlawful practice, reinstatement of plaintiff to his former position, back pay, compensatory damages, and attorney's fees if plaintiff so requests. 49 U.S.C. § 2305(c)(2)(B) (1982).

21. *Coman*, 325 N.C. at 175, 381 S.E.2d at 447.

22. *Id.* See *infra* notes 77-85 and accompanying text.

23. *Coman*, 325 N.C. at 176, 381 S.E.2d at 447.

24. *Id.*

25. *Id.*

their employers,"²⁶ the court recognized plaintiff's cause of action for wrongful discharge based on the public policy exception to the at-will employment doctrine.²⁷

The supreme court cited two cases in support of its recognition of the public policy exception. First, the court reasoned from a nineteenth century case, *Haskins v. Royster*,²⁸ that state law had never approved an employee's dismissal in bad faith.²⁹ The court then cited *Malever v. Jewelry Co.*³⁰ for the proposition that a permanent job is an "indefinite general hiring terminable in *good faith* at the will of either party."³¹

The court also supported its decision by citing cases from other jurisdictions that have recognized the public policy exception.³² The court asserted that it was justified in making this marked change in North Carolina employment law because approximately four-fifths of United States jurisdictions have recognized this exception.³³ In particular, the court analogized *Coman* to *McClanahan v. Remington Freight Lines*,³⁴ an Indiana case "on all fours with the present appeal."³⁵ In *McClanahan* plaintiff truck driver refused to drive an overweight truck through Illinois.³⁶ Defendant's manager ordered plaintiff to return the truck to defendant's headquarters.³⁷ In retaliation for not following defendant's order to drive the overweight truck in violation of Illinois state law, defendant fired plaintiff.³⁸ The Indiana court held that allowing the discharge would contravene the state's public policy³⁹ and stated that a "tightly defined exception to

26. *Id.*

27. *Id.* The court stated:

Where the public policy providing for the safety of the traveling public is involved, we find it is in the best interest of the state on behalf of its citizens to encourage employees to refrain from violating that public policy at the demand of their employers. Providing employees with a remedy should they be discharged for refusing to violate this public policy supplies that encouragement.

Id., 381 S.E.2d at 447-48.

28. 70 N.C. 601 (1874).

29. *Coman*, 325 N.C. at 176-77, 381 S.E.2d at 448. The court stated that *Haskins* stood for the proposition that the "master could not discharge his servant in bad faith." *Id.* at 177, 381 S.E.2d at 448.

30. 223 N.C. 148, 25 S.E.2d 436 (1943).

31. *Coman*, 325 N.C. at 177, 381 S.E.2d at 448 (emphasis added). The dissenting justice in *Coman* viewed the majority's reliance on *Haskins* and *Malever* as misleading. *Id.* at 179, 381 S.E.2d at 449 (Meyer, J., dissenting). According to the dissenting justice, *Haskins* dealt with the malicious enticement of agricultural workers, not wrongful discharge. *Id.* at 179-80, 381 S.E.2d at 449 (Meyer, J., dissenting). Furthermore, *Malever* contained no discussion of good faith. *Id.* at 180, 381 S.E.2d at 450 (Meyer, J., dissenting).

32. *Id.* at 177, 381 S.E.2d at 448.

33. J. Parker, *The Uses of the Past: The Surprising History of Terminable-At-Will Employment in North Carolina*, 22 WAKE FOREST L. REV. 167, 170 & n.13 (1987).

34. 517 N.E.2d 390 (Ind. 1988).

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

36. *McClanahan*, 517 N.E.2d at 391.

37. *Id.*

38. *Id.*

39. *Id.* at 393. The statute in question in *McClanahan* is an Illinois statute, even though both plaintiff and the defendant were domiciled in Indiana. Plaintiff was scheduled to drive through Illinois and was required to obey its regulations. The court based its exception to the at-will employ-

the employment at will doctrine is appropriate."⁴⁰ Highlighting the employee's dilemma,⁴¹ the Indiana court recognized a cause of action for wrongful discharge under these facts.⁴²

The North Carolina court further justified its decision by pointing out that scholars support the recognition of the public policy exception.⁴³ The court also emphasized that its decision was not based on a violation of federal public policy.⁴⁴

The decision in *Coman* marks a departure from North Carolina's traditionally strict adherence to the at-will employment doctrine.⁴⁵ This doctrine was developed in the late nineteenth century.⁴⁶ Horace Wood first stated the American version of the at-will employment doctrine during the Industrial Revolution.⁴⁷ The premise of the doctrine was that the employee-employer relationship was terminable at will by either party in the absence of an employment contract fixing a length of employment⁴⁸ or when an existing contract did not fix the length of employment.⁴⁹ Courts in the United States adopted Wood's definition readily and this legal concept aided in the rapid economic development of the United States in the nineteenth century.⁵⁰

The courts in North Carolina strictly followed this rule for nearly ninety

ment doctrine on the violation of any statute or regulation, not only those statutes passed by the Indiana legislature. *Id.*

40. *Id.*

41. *Id.* The court stated that under the Illinois statute, the employee would be personally liable for the violation. *Id.*

42. *Id.*

43. *Coman*, 325 N.C. at 178, 381 S.E.2d at 448.

44. *Id.* at 178, 381 S.E.2d at 449. The dissenting justice argued that the plaintiff's remedy was available in the federal courts, not the state courts, because a federal statute provides a remedy. *Id.* at 179, 381 S.E.2d at 449 (Meyer, J., dissenting). See *supra* note 20 (describing the applicable federal remedy).

45. 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).

46. A. HILL, "WRONGFUL DISCHARGE" AND THE DEROGATION OF THE AT-WILL EMPLOYMENT DOCTRINE 4 (Labor Relations and Public Policy Series, University of Pennsylvania, Wharton School (1987)).

47. Wood stated the American doctrine of employment-at-will:

With us the rule is inflexible that a general or indefinite hiring is *prima facie* a hiring at will, and if the servant seeks to make it out a yearly hiring, the burden is upon him to establish it by proof. A hiring at so much a day, week, month or year, no time being specified, is an indefinite hiring, and no presumption attaches that it was for a day even, but only at the rate fixed for whatever time the party may serve.

Id. at 5 (quoting H.G. WOOD, MASTER AND SERVANT § 134, at 272-73 (2d ed. 1886)).

A commentator has pointed out that none of the four cases Wood cited in support of the rule stands for the proposition. Note, *Implied Contract Rights to Job Security*, 26 STAN. L. REV. 335, 341-42 n.54 (1974).

48. A. HILL, *supra* note 46, at 5.

49. *Id.*

50. *Coman*, 325 N.C. at 174, 381 S.E.2d at 446. The American rule of the at-will employment doctrine is frequently stated thus: "All may dismiss their employees at will, be they many or few, for good cause, for no cause or even for cause morally wrong, without being thereby guilty of legal wrong. *A fortiori* they may threaten to discharge them without thereby doing an illegal act, per se." Payne v. Western & Atl. R.R., 81 Tenn. 507, 519-20 (1884), *rev'd on other grounds sub nom.* Hutton v.

years.⁵¹ The state legislature modified the at-will doctrine only in a very limited way, by prohibiting specific retaliatory discharges by employers.⁵² Until *Coman*, the North Carolina Supreme Court consistently refused to recognize the tort of wrongful discharge unless and until the legislature expressly created the cause of action by statute.⁵³

In *Dockery v. Lampart Table Co.*⁵⁴ plaintiff was injured at his place of employment when some tables fell on him.⁵⁵ Plaintiff suffered a partial permanent disability and filed a workers' compensation claim.⁵⁶ He was later fired by the defendant, allegedly in retaliation for filing the claim.⁵⁷ *Dockery* was a case of first impression in North Carolina.⁵⁸ At that time, there was not a provision in the North Carolina workers' compensation statute creating a cause of action in tort for the retaliatory firing of an employee who had filed a workers' compensation claim.⁵⁹ Plaintiff cited cases from other jurisdictions that recognized this tort; the workers' compensation statutes in those jurisdictions, however, specifically provided for the cause of action.⁶⁰ The *Dockery* court refused to recognize the cause of action for retaliatory discharge,⁶¹ reasoning that if the legislature had intended to limit the at-will employment doctrine, it would have created the cause of action within this otherwise comprehensive legislation.⁶² The court referred to the long tradition of the at-will employment doctrine in North Carolina

Watters, 132 Tenn. 527, 179 S.W. 134 (1915) (emphasis added); see also *Wagonseller v. Scottsdale Memorial Hosp.*, 147 Ariz. 370, 376, 710 P.2d 1025, 1031 (1985).

The North Carolina Supreme Court pointed out that the at-will employment doctrine aided economic growth in the United States. *Coman*, 325 N.C. at 174, 381 S.E.2d at 446.

51. The Supreme Court of North Carolina first expounded the at-will-employment rule in *Edwards v. Seaboard & Roanoke R.R.*, 121 N.C. 490, 491, 28 S.E.2d 137, 137 (1897). The North Carolina Court of Appeals created the first significant judicial exception to the rule in *Sides v. Duke Univ.*, 74 N.C. App. 331, 328 S.E.2d 818, *disc. rev. denied*, 314 N.C. 331, 335 S.E.2d 13 (1985).

52. An employer cannot terminate an employee for filing for workers' compensation, N.C. GEN. STAT. § 97-6.1 (1985), involvement in labor dispute, *id.* § 95-83 (1985), filing OSHA claim, *id.* § 95-130(8) (1985), filing wage and hour complaint, *id.* § 95-25(20) (1985), or testifying at an unemployment compensation hearing, *id.* § 96-15.1 (1985). In *Williams v. Hillhaven Corp.*, 91 N.C. App. 35, 40-41, 370 S.E.2d 423, 426 (1988), the court of appeals interpreted § 96-15.1 in the employment at-will context.

53. *Williams v. Hillhaven Corp.*, 91 N.C. App. 35, 370 S.E.2d 423 (1988); *Burrow v. Westinghouse Elec. Corp.*, 88 N.C. App. 347, 363 S.E.2d 215, *disc. rev. denied*, 322 N.C. 111, 367 S.E.2d 910 (1988); *Hogan v. Forsyth Country Club Co.*, 79 N.C. App. 483, 340 S.E.2d 116, *disc. rev. denied*, 317 N.C. 334, 346 S.E.2d 140 (1986); *Trought v. Richardson*, 78 N.C. App. 758, 338 S.E.2d 617, *disc. rev. denied*, 316 N.C. 557, 344 S.E.2d 18 (1986); *Walker v. Westinghouse Elec. Corp.*, 77 N.C. App. 253, 335 S.E.2d 79, *disc. rev. denied*, 315 N.C. 597, 341 S.E.2d 39 (1985); *Dockery v. Lampart Table Co.*, 36 N.C. App. 293, 244 S.E.2d 272, *disc. rev. denied*, 295 N.C. 465, 246 S.E.2d 215 (1978).

54. 36 N.C. App. 293, 244 S.E.2d 272, *disc. rev. denied*, 295 N.C. 465, 246 S.E.2d 215 (1978).

55. *Id.* at 294, 244 S.E.2d at 274.

56. *Id.*

57. *Id.* at 295, 244 S.E.2d at 274.

58. *Id.*

59. See *id.* at 296, 244 S.E.2d at 275.

60. *Id.* at 295-96, 244 S.E.2d at 274-75; see, e.g., *Frampton v. Central Ind. Gas Co.*, 260 Ind. 249, 297 N.E.2d 425 (1973); *Texas Steel Co. v. Douglas*, 533 S.W.2d 111 (Tex. Civ. App. 1976). *Contra* *Christy v. Petrus*, 365 Mo. 1187, 295 S.W.2d 122 (1956); *Raley v. Darling Shop of Greenville, Inc.*, 216 S.C. 536, 59 S.E.2d 148 (1950).

61. *Dockery v. Lampart Table Co.*, 36 N.C. App. 293, 296, 244 S.E.2d 272 275, *disc. rev. denied*, 295 N.C. 465, 246 S.E.2d 215 (1978).

62. *Id.* at 297, 244 S.E.2d at 275.

and refused to limit the doctrine by recognizing a cause of action for retaliatory discharge.⁶³

In 1985 the North Carolina Court of Appeals in *Sides v. Duke University*⁶⁴ altered the at-will employment doctrine by creating a narrow public policy exception. Plaintiff in *Sides* was a nurse anesthetist at defendant hospital.⁶⁵ When she accepted the position, the hospital informed her that it fired nurses only for incompetence.⁶⁶ After an operation, a staff physician ordered plaintiff to administer a certain anesthetic to a patient.⁶⁷ Plaintiff refused to do so fearing the medication would cause complications for the patient.⁶⁸ The physician administered the drug to the patient himself, and the patient suffered severe permanent brain damage.⁶⁹ The injured patient's estate filed suit against the hospital and the physician, alleging medical malpractice.⁷⁰ *Sides* was a deponent and trial witness in the case. The hospital administrators attempted to persuade *Sides* to "not tell all she had seen."⁷¹ *Sides* refused to do so and testified truthfully at the deposition and again at trial.⁷² The hospital administrators and physician lost the case and the patient's estate won an award of \$1,750,000.⁷³ Because of *Sides*' refusal to perjure herself and her incriminating testimony against defendant, the hospital discharged *Sides*.⁷⁴ She subsequently filed suit for wrongful discharge⁷⁵, basing her claim on a public policy exception to the at-will employment doctrine.⁷⁶

In deciding *Sides*, the North Carolina Court of Appeals faced the hurdle of *Dockery*, the earlier case in which the court held that the cause of action of retaliatory discharge did not exist in North Carolina.⁷⁷ The court distinguished *Dockery* by pointing out that "the public policy considerations that affect this case are much more compelling than those that affected" *Dockery*.⁷⁸ The court noted that the state legislature made perjury a felony under North Carolina law and thus indicated that perjury is against the public policy of this state.⁷⁹ In

63. *Id.* The General Assembly subsequently created a cause of action of retaliatory discharge, prohibiting termination for filing a workers' compensation claim. Act of June 1, 1979, ch. 738, § 1, 1979 N.C. Sess. Laws 806 (codified at N.C. GEN. STAT. § 97-6.1 (1985)).

64. 74 N.C. App. 331, 328 S.E.2d 818, *disc. rev. denied*, 314 N.C. 331, 335 S.E.2d 13 (1985). *Sides* was analyzed in Note, *Sides v. Duke Univ.: A Public Policy Exception to the Employment-At-Will Rule*, 64 N.C.L. REV. 840 (1986).

65. *Sides*, 74 N.C. App. at 332, 328 S.E.2d at 820.

66. *Id.* at 333, 328 S.E.2d at 821.

67. *Id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. *Id.* at 334, 328 S.E.2d at 821-22.

75. *Id.* at 332, 328 S.E.2d at 820.

76. *Id.* at 335, 328 S.E.2d at 822.

77. *Id.* at 336, 328 S.E.2d at 822.

78. *Id.* at 337, 328 S.E.2d at 823.

79. *Id.* at 337-38, 328 S.E.2d at 823-24. N.C. GEN. STAT. §§ 14-209, 14-210 (1986) (perjury is unlawful).

support of its holding, the court cited *Petermann v. International Brotherhood of Teamsters*,⁸⁰ the seminal case creating the public policy exception in California.⁸¹ The North Carolina appellate court followed the reasoning of the California court and recognized the plaintiff's wrongful discharge claim.⁸² The court reasoned that if an employer can terminate employment for a refusal to act unlawfully, employees may break the law for fear of losing their jobs if they refuse.⁸³ The purpose of the law is to prevent lawlessness; failing to recognize this public policy exception would encourage lawlessness.⁸⁴ The *Sides* court therefore established that discharge by the employer in retaliation for the employee's failure to commit perjury was an exception to the at-will employment doctrine.⁸⁵

In several cases after *Sides* the North Carolina Court of Appeals strictly construed the *Sides* decision. In *Walker v. Westinghouse Electric Corp.*⁸⁶ plaintiff, a former employee of defendant,⁸⁷ alleged that defendant fired him for raising safety concerns in the workplace.⁸⁸ This court held that the facts did not fall within the *Sides* exception.⁸⁹ Plaintiff did not indicate the interval of time between the reporting of the safety conditions and the plaintiff's discharge by defendant.⁹⁰ In contrast, plaintiff in *Sides* was "discharged within three months of the protected conduct"⁹¹ and suggested a causal relationship between these two events. Plaintiff in *Walker* failed to forecast sufficient evidence that his discharge was caused by his complaints about safety.⁹² Furthermore, plaintiff did not allege violations of federal or state safety regulations.⁹³ The court stated that even if a cause of action was recognized, plaintiff failed to allege sufficient evi-

80. 174 Cal. App. 2d 184, 344 P.2d 25 (1959).

81. *Sides*, 74 N.C. App. at 339, 328 S.E.2d at 825. *Petermann*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959). The court emphasized the following language from *Petermann*: "It would be obnoxious to the interest of the state and contrary to public policy and sound morality to allow an employer to discharge any employee, whether the employment be for a designated or unspecified duration, on the ground that the employee declined to commit perjury, an act specifically enjoined by statute." *Id.* at 340, 328 S.E.2d at 825 (quoting *Petermann*, 174 Cal. App. 2d at 188-89, 344 P.2d at 27).

82. *Id.* at 343, 328 S.E.2d at 826-27.

83. *Id.* at 342, 328 S.E.2d at 826. The court stated:

Thus, while there may be a right to terminate a contract at will for no reason, or for an arbitrary or irrational reason, there can be no right to terminate such a contract for an unlawful reason or purpose that contravenes public policy. A different interpretation would encourage and sanction lawlessness, which law by its very nature is designed to discourage and prevent.

Id. This language later was affirmed specifically by the supreme court in *Coman*, 325 N.C. at 175, 381 S.E.2d at 447; see *infra* note 135 and accompanying text.

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

85. *Id.* at 342, 328 S.E.2d at 826.

86. 77 N.C. App. 253, 335 S.E.2d 79 (1985), *disc. rev. denied*, 315 N.C. 597, 341 S.E.2d 39 (1986).

87. *Id.* at 254, 335 S.E.2d at 80.

88. *Id.* at 263, 335 S.E.2d at 85.

89. *Id.* at 263, 335 S.E.2d at 86.

90. *Id.*

91. *Id.*

92. *Id.*

93. *Id.* at 264, 335 S.E.2d at 86.

dence to survive a motion for summary judgment.⁹⁴ The court also feared that creating a general cause of action would limit the at-will employment doctrine.⁹⁵

In *Trought v. Richardson*⁹⁶ the North Carolina Court of Appeals again refused to extend the public policy exception beyond the facts of *Sides*.⁹⁷ Plaintiff in *Trought* was employed by defendant hospital in the position of Vice President for Nursing Services.⁹⁸ Plaintiff transferred several licensed practical nurses from the emergency room in order to comply with the Nursing Practice Act.⁹⁹ Defendant allegedly discharged plaintiff because of these transfers,¹⁰⁰ and plaintiff filed suit claiming wrongful discharge based on a violation of public policy.¹⁰¹ The appellate court held that the facts of this case were not within the *Sides* exception.¹⁰² *Sides* created only a perjury exception to the at-will employment doctrine, and there was no allegation of perjury in this complaint.¹⁰³

In *Hogan v. Forsyth Country Club Co.*¹⁰⁴ three employees filed suit against their employer claiming intentional infliction of emotional distress, negligent infliction of emotional distress, and wrongful termination.¹⁰⁵ The chef of the country club allegedly harassed and verbally abused the employees.¹⁰⁶ The trial court did not recognize any of the wrongful termination suits because it construed the *Sides* holding narrowly¹⁰⁷ and declined to recognize a general public policy exception to the at-will employment doctrine. The court further interpreted *Sides* as creating two exceptions to the at-will employment doctrine: discharge for refusing to perform an illegal act and discharge for performing a legally required act.¹⁰⁸ The court's interpretation here was dictum. In denying plaintiffs' wrongful discharge claims, the court did not rely on this language. Furthermore, no subsequent court has relied on this language defining the *Sides* exception.

94. *Id.*

95. *Id.* at 263, 335 S.E.2d at 86.

96. 78 N.C. App. 758, 338 S.E.2d 617, *disc. rev. denied*, 316 N.C. 557, 344 S.E.2d 18 (1986).

97. *Id.* at 762, 338 S.E.2d at 619.

98. *Id.* at 759, 338 S.E.2d at 618.

99. *Id.* at 759-60, 338 S.E.2d at 618. The North Carolina Nursing Practice Act appears at N.C. GEN. STAT. §§ 90-171.19 to -171.47 (1985 & Supp. 1989).

100. *Trought*, 78 N.C. App. at 760, 338 S.E.2d at 618.

101. *Id.* at 759-60, 338 S.E.2d at 618.

102. *Id.* at 762, 338 S.E.2d at 619.

103. *Id.*

104. 79 N.C. App. 483, 340 S.E.2d 116, *disc. rev. denied*, 317 N.C. 334, 346 S.E.2d 140 (1986).

105. *Id.* at 485, 340 S.E.2d at 118. The theory forming the basis for the wrongful termination claim is unclear. The plaintiff may have made the theory underlying the claim vague deliberately in order to survive a motion for summary judgment. This strategy failed. See *id.* at 499-500, 340 S.E.2d at 126.

106. *Id.* at 485, 340 S.E.2d at 118.

107. *Id.* at 498, 340 S.E.2d at 125. This case was analyzed in Note, *Hogan v. Forsyth Country Club Co.: Workers' Compensation and Mental Injuries*, 65 N.C.L. REV. 816 (1987).

108. *Hogan*, 79 N.C. App. at 498, 340 S.E.2d at 126 (citing *Smith v. Ford Motor Co.*, 289 N.C. 71, 80, 221 S.E.2d 282, 288 (1976)). The court stated, "We interpret *Sides* as recognizing a common law claim for relief in tort in favor of an employee at will who is discharged from his employment in retaliation for (1) his refusal to perform an act prohibited by law, or (2) his performance of an act required by law. Otherwise, under the clear language of *Smith v. Ford Motor Co.*, an employee at will may be discharged with or without cause at anytime, unless his discharge is expressly prohibited by statute." *Id.*

In *Guy v. Travenol Laboratories*¹⁰⁹ the Fourth Circuit Court of Appeals also strictly construed the *Sides* exception. Plaintiff alleged that employees of defendant laboratory falsified reports required by the Food and Drug Administration.¹¹⁰ Plaintiff brought the violation to the attention of his superiors, and they told him to falsify the reports.¹¹¹ Plaintiff refused and was discharged.¹¹²

The Fourth Circuit Court of Appeals was unwilling to expand the *Sides* public policy exception and strictly construed North Carolina case law, pointing out that the North Carolina courts adhered to the at-will employment doctrine steadfastly.¹¹³ According to the federal appellate court, *Sides* created a "limited perjury exception"¹¹⁴ in order to "prevent perjury and preserve judicial integrity."¹¹⁵ Under the facts of the *Guy* case, the court refused to recognize the plaintiff's claim of wrongful discharge.¹¹⁶

In *Burrow v. Westinghouse Electric Corp.*¹¹⁷ defendant employed the plaintiff in the position of a truck driver. Plaintiff was injured on the job, and, unable to drive safely, abandoned his truck on the highway.¹¹⁸ Plaintiff alleged that defendant fired him in retaliation.¹¹⁹ In his suit for wrongful discharge, plaintiff relied on the public policy exception articulated in *Sides*.¹²⁰ The court held that the overriding policy issues in *Sides* were not present in this case.¹²¹ The court stated that many jobs are dangerous or unsafe, and that it was not ready to recognize a wrongful discharge claim under these facts.¹²²

On appeal plaintiff raised the issue that the federal trucking regulation¹²³ prevented defendant from firing plaintiff.¹²⁴ The court of appeals addressed the issue and stated that the violation of the federal regulation did not create a cause of action under North Carolina tort law.¹²⁵

Courts interpreted *Sides* to create an exception to the at-will employment doctrine only in situations in which an employer attempted to coerce an em-

109. 812 F.2d 911 (4th Cir. 1987).

110. *Id.* at 912.

111. *Id.*

112. *Id.*

113. *Id.* at 913. First, if the employee has obtained an employment contract of fixed duration, then there is no employment-at-will. *Id.* Second, if the employee has provided some additional consideration for the employment contract, such as changing his residence, then the employment is no longer employment at will but rather it continues as long as performance is satisfactory. *Id.*

114. *Id.* at 915.

115. *Id.* at 914.

116. *Id.* at 917.

117. 88 N.C. App. 347, 363 S.E.2d 215, *disc. rev. denied*, 322 N.C. 111, 367 S.E.2d 910 (1988).

118. *Id.* at 348, 363 S.E.2d at 216.

119. *Id.*

120. *Id.* at 353, 363 S.E.2d at 219.

121. *Id.* at 354, 363 S.E.2d at 219-20.

122. *Id.*

123. *Id.*, 363 S.E.2d at 220 (citing 49 C.F.R. § 392.3 (1986)). The regulation states that an employee shall not drive when his physical condition is impaired. *Id.*

124. *Id.*

125. *Id.* The supreme court also addressed this issue in *Coman* and stated that its decision was not based on a violation of federal public policy, but rather was based on a violation of North Carolina state public policy. *Coman*, 325 N.C. at 178, 381 S.E.2d at 449.

ployee to commit perjury. In *Williams v. Hillhaven Corp.*,¹²⁶ factually similar to *Sides*, plaintiff was able to take advantage of the *Sides* exception. Plaintiff in *Williams* was a registered nurse at defendant nursing home.¹²⁷ Plaintiff testified under a subpoena at a hearing before the unemployment compensation commission regarding a claim made by a nursing assistant who was discharged by defendant.¹²⁸ The commission awarded the nursing assistant unemployment benefits.¹²⁹ After the hearing, defendant's manager became hostile towards plaintiff and shortly thereafter fired plaintiff for minor infractions other employees were allowed to commit.¹³⁰ The court held that the facts of this case fell within the narrow *Sides* exception prohibiting discharge for a refusal to commit perjury.¹³¹ The court emphasized that the North Carolina General Assembly had recently passed a statute that created a cause of action identical to that which plaintiff was claiming.¹³² Even though the statute became effective after plaintiff filed suit, the public policy articulated by the statute supported plaintiff's claim.¹³³

In *Coman v. Thomas Manufacturing Co.*, the North Carolina Supreme Court departed significantly from the at-will employment doctrine as it had been followed for the past ninety years. The court affirmed the *Sides* public policy exception¹³⁴ and broadened it beyond the strict construction of the recent appellate decisions.

The *Coman* court affirmed specific language from the *Sides* opinion and adopted this language as the North Carolina rule on public policy exceptions to the at-will employment doctrine:

[W]hile there may be a right to terminate a contract at will for no reason, or for an arbitrary reason, there can be no right to terminate such a contract for an unlawful reason or purpose that contravenes public policy. A different interpretation would encourage and sanction lawlessness, which law by its very nature is designed to discourage and prevent.¹³⁵

Despite its careful reiteration of the *Sides* language, the court appeared to limit the public policy exception to an employee's refusal to commit an unlawful act.¹³⁶ Although perjury and a violation of federal and state trucking regulations differ, "both offend the public policy of North Carolina."¹³⁷ Defendant in *Coman*, by requiring plaintiff to drive longer than allowed by law, offended the

126. 91 N.C. App. 35, 370 S.E.2d 423 (1988).

127. *Id.* at 36, 370 S.E.2d at 423.

128. *Id.* at 36, 370 S.E.2d at 424.

129. *Id.*

130. *Id.* at 37, 370 S.E.2d at 424.

131. *Id.* at 42, 370 S.E.2d at 426.

132. *Id.* at 41, 370 S.E.2d at 426 (citing Act of July 1, 1987, ch. 532, § 3, 1987 N.C. Sess. Laws 863, 863-64 (codified at N.C. GEN. STAT. § 96-15.1 (1985))).

133. *Id.*

134. *Coman*, 325 N.C. at 175, 381 S.E.2d at 447.

135. *Id.* (quoting *Sides v. Duke Univ. Hosp.*, 74 N.C. App. 331, 342, 328 S.E.2d 818, 826, *disc. rev. denied*, 314 N.C. 331, 335 S.E.2d 13 (1985)).

136. *Id.*

137. *Id.*

state's public policy objective of maintaining a safe public highway system as evidenced by statutes and regulations.¹³⁸

The court did not state explicitly what are legitimate sources of public policy. At a minimum, the opinion identified statutes and administrative codes as sources,¹³⁹ but the court left open the question whether sources such as ethical codes or industry standards can be used to determine public policy. The *Coman* court argued that it is the duty of the court to define public policy.¹⁴⁰ Furthermore, because courts created the at-will employment doctrine, the *Coman* court argued that the courts rather than the legislature should interpret the rule.¹⁴¹ The *Coman* court defined public policy broadly,¹⁴² stating that public policy is "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."¹⁴³ Beyond these statements, the court gave little intimation as to the analysis it will apply in deciding future public policy exception cases. Commentators have noted that a lack of guidance on sources of public policy creates ambiguity in determining the substance of public policy and therefore decreases the predictability of the grounds for a wrongful discharge suit.¹⁴⁴

The effect of the *Coman* decision on the at-will employment doctrine will depend on its interpretation by lower courts. A broad interpretation of the decision could lead to the negative economic consequences described by the dissenting justice.¹⁴⁵ In *McLaughlin v. Barclays American Corp.*,¹⁴⁶ an at-will employment doctrine case decided after *Coman*, the North Carolina Court of Appeals indicated it would interpret *Coman* narrowly. In that case, plaintiff served as a manager of one of defendant's sales offices.¹⁴⁷ During an evaluation of an employee, the employee became abusive towards plaintiff.¹⁴⁸ While defending himself, plaintiff unintentionally struck the employee.¹⁴⁹ Subsequently, plaintiff manager was discharged.¹⁵⁰ The court found that the discharge was not wrongful and refused to hold that the use of self-defense was a public policy

138. *Id.* N.C. GEN. STAT. § 20-384 (1988) (allows the Department of Motor Vehicles to promulgate trucking regulations); N.C. GEN. STAT. § 20-397 (1988) (reporting false information to the Department of Motor Vehicles is a misdemeanor); N.C. ADMIN. CODE tit. 19A 3D.0801 (Sept. 1989) (United States Department of Transportation regulations apply in North Carolina).

139. *Coman*, 325 N.C. at 175, 381 S.E.2d at 447.

140. *Id.*, at 177 n.3, 381 S.E.2d at 448 n.3.

141. *Id.*

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

143. *Id.* (quoting *Petermann v. International Bhd. of Teamsters*, 174 Cal. App. 2d 184, 344 P.2d 25 (1959)).

144. A. HILL, *supra* note 46, at 27-28; W. Mauk, *Wrongful Discharge: The Erosion of 100 Years of Employer Privilege*, 21 IDAHO L. REV. 201, 230-32 (1987).

145. *Coman*, 325 N.C. at 183-84, 381 S.E.2d at 452 (Meyer, J., dissenting). The dissenting justice argued that the employers' legitimate concerns regarding a large increase in the number of wrongful discharge suits were not dealt with by the majority. *Id.* In addition, this decision will hinder recruitment of new industry by the state because the employer's ability to discharge employees is reduced. *Id.*

146. 95 N.C. App. 301, 382 S.E.2d 836 (1989).

147. *Id.* at 302-03, 382 S.E.2d at 837.

148. *Id.* at 303, 382 S.E.2d at 837-38.

149. *Id.*, 382 S.E.2d at 838.

150. *Id.*

exception to the at-will employment doctrine.¹⁵¹

Writing for the *McLaughlin* court, Judge Becton stated that only two cases—*Sides* and *Coman*—identified a public policy exception to the at-will employment doctrine.¹⁵² These cases had two key characteristics.¹⁵³ First, the employer affirmatively instructed the employee to violate the law.¹⁵⁴ Second, if the employee acted according to the employer's instructions, "deleterious consequences" for the public at large would result.¹⁵⁵ Judge Becton narrowly interpreted *Coman* as a moderate expansion of the *Sides* perjury exception. He reasoned that *Coman* expanded the public policy exception to situations other than those involving perjury or intimidation of witnesses, but did not expand the exception to encompass broad definitions of public policy which occurred in other jurisdictions.¹⁵⁶ *McLaughlin* affirmed that the at-will employment doctrine is still in effect in North Carolina.¹⁵⁷

The *Coman* court did indicate some limitations on the availability of the public policy exception as a theory to support a wrongful discharge cause of action. The court emphasized the existence of statutes and regulations that supported the public policy of highway safety in North Carolina.¹⁵⁸ Accordingly, the court may have limited the public policy exception to those policies supported by statutes or regulations authorized by statute. In *McLaughlin* plaintiff cited no statutes or regulations to support his contention that defendant employer's discharge violated public policy. This lack of statutory support may have been a factor in not recognizing a public policy exception in *McLaughlin*.

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

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

153. *Id.*

154. *Id.*

155. *Id.*, 382 S.E.2d at 840.

156. *Id.* at 307, 382 S.E.2d at 840; see, e.g., *Petermann v. International Bhd. of Teamsters*, 174 Cal. App. 2d 184, 188-89, 344 P.2d 25, 27 (1959) (seminal case that first recognized perjury as a public policy exception); *Kerr v. Gibson's Products Co. of Bozeman*, 226 Mont. 69, 73, 733 P.2d 1292, 1294-95 (1987) (finding firing without cause to be a breach of implied covenant of good faith and fair dealing and to constitute wrongful discharge). Several decisions by the Montana Supreme Court led that state's legislature to pass the nation's first wrongful discharge statute. MONT. CODE ANN. §§ 39-2-901 to -914 (1987) (§ 39-2-904 provides that discharge is wrongful when in retaliation for employee's refusal to violate public policy; when not for good cause after the employee had completed the employer's probationary period of employment; or when the employer violates express provisions of a written personnel policy); see LEONARD, *A New Common Law of Employment Termination*, 66 N.C.L. REV. 631, 644 (1988).

157. *McLaughlin v. Barclay's Am. Corp.*, 95 N.C. App. 301, 307, 382 S.E.2d 836, 840 (1989). The court stated, "[W]e heed the Court's caution that the at-will doctrine remains in force in this State." *Id.*

158. *Coman*, 325 N.C. at 176, 381 S.E.2d at 447. Some North Carolina attorneys point out that *Coman*-type actions have been filed in employment discrimination cases. Telephone interview with Vicki Rowan, Associate with Womble, Carlyle, Sandridge & Rice, in Charlotte, N.C. (Dec. 14, 1989). The North Carolina General Assembly has passed a statute that could potentially serve as a basis for a *Coman*-type action. *Id.* The statute states in pertinent part:

It is the public policy of this State to protect and safeguard the right and opportunity of all persons to seek, obtain and hold employment without discrimination or abridgement on account of race, religion, color, national origin, age, sex, or handicap by employers which regularly employ 15 or more employees.

Equal Employment Practices Act, ch. 726, § 1, 1977 N.C. Sess. Law 933 (codified at N.C. GEN. STAT. § 143-422.2 (1987)).

Despite these arguments that may limit the effect of *Coman*, *Coman* changed North Carolina law and lower courts today would likely decide some earlier cases differently. In *Trought v. Richardson*,¹⁵⁹ where defendant hospital discharged plaintiff for her actions complying with the Nursing Practice Act, plaintiff employee probably would have a valid cause of action of wrongful discharge based on a public policy exception theory. The legislature enacted the Nursing Practice Act to protect the health and safety of the public seeking medical care in the state's hospitals.¹⁶⁰ The *Coman* court expanded the public policy exception beyond perjury to include violations of public policy that are injurious to the public at large. Violation of federal and state trucking regulations and statutes would put the safety of the travelling public at greater risk. Similarly, violation of the Nursing Practice Act would put the health and safety of the general public seeking medical care at greater risk. Given *Coman*, Trought's wrongful discharge probably would survive the motion to dismiss today.

In *Burrow v. Westinghouse Electric Corp.*¹⁶¹ the same federal and state trucking regulations used to support the public policy exception in *Coman* were at issue.¹⁶² *Coman* recognized a wrongful discharge cause of action based on protecting the public safety policy reflected in these trucking regulations.¹⁶³ It is quite likely that a court today would find that plaintiff in *Burrow* had a cognizable wrongful discharge cause of action.

In addition to its expansion of the public policy exception, the *Coman* court stated that bad faith conduct is not acceptable in commercial relationships.¹⁶⁴ By this statement, the court may have forecast future cognizable theories supporting wrongful discharge suits. This dictum implies that bad faith on the part of the employer or a violation of an implied covenant of good faith and fair dealing would support a wrongful discharge cause of action.

The *Coman* court distinguished the public policy exception from an exception for bad faith,¹⁶⁵ implying that a covenant of good faith and fair dealing was a provision of every employment contract.¹⁶⁶ This recognition of an implied covenant of good faith and fair dealing appears to be a new development in labor law in North Carolina.¹⁶⁷ The effect of this development will depend on the

159. 78 N.C. App. 758, 338 S.E.2d 617, *disc. rev. denied*, 316 N.C. 557, 344 S.E.2d 18 (1986); see *supra* notes 96-103 and accompanying text.

160. Nursing Practice Act, ch. 360, § 1, 1981 N.C. Sess. Laws 397 (codified at N.C. GEN. STAT. § 90-171.19 (1985) (act was "necessary to ensure minimum standards of competency and to provide the public safe nursing care")).

161. 88 N.C. App. 347, 363 S.E.2d 215, *disc. rev. denied*, 322 N.C. 111, 367 S.E.2d 910 (1988); see *supra* notes 117-25 and accompanying text.

162. *Id.* at 354, 363 S.E.2d at 220. On appeal the plaintiff in *Burrow* cited 49 C.F.R. § 392.3 (1986) and 49 U.S.C. § 2305 (Supp. V 1987). *Burrow*, 88 N.C. App. at 354, 363 S.E.2d at 220.

163. *Coman*, 325 N.C. at 176, 381 S.E.2d at 447. The plaintiff in *Coman* cited 49 C.F.R. §§ 390-398, which are applicable in North Carolina through N.C. ADMIN. CODE tit. 19A 3D.0801 (Sept. 1989). See *supra* note 138.

164. *Coman*, 325 N.C. at 177, 381 S.E.2d at 448. The *Coman* court stated, "Bad faith conduct should not be tolerated in employment relations, just as it is not accepted in other commercial relationships." *Id.*

165. *Id.* at 176-77, 381 S.E.2d at 448.

166. *Id.* at 177, 381 S.E.2d at 448.

167. *Id.*

interpretation of bad faith by lower courts.

Bad faith, like public policy, is an inherently ambiguous term. In its discussion of the bad faith exception, the court in *Coman* cited favorably cases from other jurisdictions that broadly interpreted the implied covenant.¹⁶⁸ These cases gave the employees greater legal protection from discharge than under the at-will employment doctrine. In *Cleary v. American Airlines, Inc.*, for example, the California Court of Appeals found that the implied covenant of good faith created a "good cause" standard of discharge.¹⁶⁹ The good cause standard places a heavy burden on employers and requires employers to justify reasons for the discharge.

The *Coman* court's citation of cases from other jurisdictions that broadly interpret bad faith and the implied covenant of good faith may indicate that the North Carolina court will eventually adopt a good cause standard for discharge in future cases. Courts in other jurisdictions have considered many factors in determining bad faith. These factors include the employee's length of service,¹⁷⁰ provisions in an employment manual regarding dismissal,¹⁷¹ company procedures regarding dismissal,¹⁷² and the employer's retaliatory intent in dismissing the employee.¹⁷³ The courts have provided little guidance in the relevant weight of these factors.¹⁷⁴ Without more guidance regarding the interpretation of bad faith or the implied covenant of good faith, the employer's liability for dismissal of an employee is unpredictable.

In addition to creating ambiguities regarding what public policy is sufficient to support an exception to the at-will employment doctrine or when bad faith will support a wrongful discharge action, the *Coman* court failed to clarify the types of damages recoverable in a wrongful discharge suit. Because it was ruling on a 12(b)(6) motion to dismiss, the court did not have to address the issue of damages. Some jurisdictions that recognize wrongful discharge based on the public policy exception allow the recovery of both contract and tort damages.¹⁷⁵

168. *Cleary v. American Airlines, Inc.*, 111 Cal. App. 3d 443, 168 Cal. Rptr. 722 (1980) (created "good cause" standard for discharge); *Fortune v. National Cash Register Co.*, 373 Mass. 96, 364 N.E.2d 1251 (1977) (bad faith supports wrongful discharge claim); *Kerr v. Gibson's Products Co.*, 226 Mont. 69, 733 P.2d 1292 (1987) (wrongful discharge based on violation of implied covenant of good faith and fair dealing); *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 316 A.2d 549 (1974) (bad faith exception and public policy exception recognized).

169. *Cleary*, 111 Cal. App. 3d at 456, 168 Cal. Rptr. at 729.

170. *Id.* at 455, 168 Cal. Rptr. at 729.

171. *Kerr*, 226 Mont. at 72, 733 P.2d at 1294.

172. *Id.*; see also *Cleary*, 111 Cal. App. 3d at 455, 168 Cal. Rptr. at 729.

173. *Monge v. Beebe Rubber Co.*, 114 N.H. 130, 134, 316 A.2d 549, 552 (1974). This decision was later limited to discharges for an employee's refusal to commit an act public policy condemns or for performance of an act public policy encourages. *Howard v. Dorr Woolen Co.*, 120 N.H. 295, 297, 414 A.2d 1273, 1274 (1980).

174. *Monge*, 114 N.H. at 133, 316 S.2d at 551. The court stated, "[i]n all employment contracts, whether at will or for a definite term, the employer's interest in running his business as he sees fit must be balanced against the interest of the employee in maintaining his employment, and the public's interest in maintaining a proper balance between the two." *Id.*

175. *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 666-67, 765 P.2d 373, 377 (1988). The California Supreme Court held that tort damages are recoverable in wrongful discharge actions based on the public policy exception. *Id.*; see also *Payne & Smith, Establishing the Boundaries of Wrongful Discharge: California's Foley Decision*, 15 EMP. REL. L.J. 35, 39 (1989); *Tompkins, Legis-*

Courts generally only allow recovery of contract damages under a theory of violation of the implied covenant of good faith. The cases cited in *Coman* follow this general rule regarding damages.¹⁷⁶ In *Cleary*, however, the California appellate court allowed recovery for both contract and tort damages.¹⁷⁷ The California Supreme Court in December, 1988, limited recovery in implied covenant cases to contract damages only and stated that the *Cleary* court erred in allowing the recovery of tort damages.¹⁷⁸ The types of damages recoverable should be clarified in future decisions.

The *Coman* exception leaves open additional questions to be considered in future cases. For instance, what effect might a mistake by the employer or employee have on a wrongful discharge claim? What should be the resolution of the problem of an employee who thought the employer's order was unlawful when in fact it was lawful or of an employer who thought the act was lawful when in fact it was unlawful?¹⁷⁹ These questions of mistake should be resolved in a future decision with appropriate facts.

Coman significantly limited the at-will employment doctrine in North Carolina by creating a public policy exception. The language regarding bad faith was not necessary to the court's holding and may be weakened in future cases. Additionally, the *Coman* court left to future decisions the task of defining public policy and bad faith. A broad interpretation could significantly disrupt an employer's ability to run his business.¹⁸⁰ A more clearly defined limitation could go a long way in advancing specific public policy goals set by the General Assembly. The court in *Coman* set a broad standard. The broad language of this decision heralds more wrongful discharge suits based on a broader range of theories than in the past.

DUNCAN ALFORD

lating the Employment Relationships: *Montana's Wrongful Discharge Law*, 14 EMP. REL. L.J. 387, 390 (1989).

176. In *Monge* the New Hampshire court allowed recovery for contract damages only, and specifically excluded any damages for mental distress. *Monge*, 114 N.H. at 134, 316 S.2d at 552. In *Fortune* the Massachusetts Supreme Court allowed recovery only for contract damages. *Fortune v. National Cash Register Co.*, 373 Mass. 96 103, 364 N.E.2d 1251 1256 (1977).

177. *Cleary v. American Airlines, Inc.*, 111 Cal. App. 3d 443, 456, 168 Cal. Rptr. 722, 730 (1980).

178. *Foley*, 47 Cal. 3d at 687, 765 P.2d at 392. The *Foley* court noted that few jurisdictions allowed recovery of tort damages for breach of an implied covenant of good faith. *Id.* at 686-87 n.26, 765 P.2d at 391 n.26. The dissenting justice in *Coman* emphasized that California had retreated from its development of wrongful discharge. *Coman*, 325 N.C. at 185-86, 381 S.E.2d at 453 (Meyer, J. dissenting).

179. Lopatka, *The Emerging Law of Wrongful Discharge—A Quadrennial Assessment of the Labor Law Issue of the 80's*, 40 BUS. LAW. 1, 7-8 (Nov. 1984).

180. The costs of defending an unfounded wrongful discharge suit even at the motion to dismiss stage can be burdensome for the employer. Furthermore, the threat of suits will encourage employers to document every action taken regarding an employee's career which will further increase the cost of doing business.