Case No. 1121091

IN THE
SUPREME COURT OF ALABAMA

FARMERS INSURANCE EXCHANGE, et al.,	§	
	§	
Appellant,	§	**On Appeal from the Circuit Court of Mobile County, Case No. CV-10-900355**
v.	§	
ROBERT KYLE MORRIS,	§	
	§	
Appellee.	§	

AMICUS CURIAE BRIEF OF THE ALABAMA DEFENSE LAWYERS ASSOCIATION IN SUPPORT OF APPLICATION FOR REHEARING

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STATEMENT OF THE INTEREST OF AMICUS CURIAE

The Alabama Defense Lawyers Association ("ADLA") is a non-profit association of approximately 1,100 Alabama lawyers who devote a substantial portion of their professional practices to the defense of civil lawsuits. Founded in 1964, ADLA's purpose includes promoting improvement in the administration and quality of justice. Consistent with ADLA's stated purpose, the Association, by and through its Amicus Curiae Committee, occasionally seeks to participate in cases that involve important questions of law to assist the Court in its consideration and resolution of those cases. In its brief, ADLA addresses what it considers to be significant questions of law.

ADLA and its undersigned counsel have no pecuniary interest in this case and have no professional relationship with the parties. The appellants have consented to the filing of this brief in support of the issues addressed by ADLA on appeal. ADLA is grateful for the opportunity to submit the following authorities and argument for the Court's consideration.

STATEMENT OF THE ISSUES ADDRESSED BY AMICUS CURIAE

I. Whether in Allowing Morris's Fraud Claim the Court's Opinion Misapprehended the Holding, and the Wisdom, of *Kidder*?

II. Whether the Court's Opinion Misapprehended the Applicability of *Foremost* to this Lawsuit, and Failed to Properly Apply the Holding of *Foremost* to Morris's Fraud Claim?

SUMMARY OF THE ARGUMENT

The Court's opinion as rendered upon original submission is troubling in two key aspects. First, the Court continues adherence to an activist decision from the 1990's era Hornsby era. *Kidder* was bad law then, and it remains bad law today. That decision fundamentally changed the law of fraud in the employment context, and did so in a way that contradicts this Court's holdings in every other context. It should be overruled, and the Court should return to the proper understanding of fraud in the employment context, which is that termination is legally inadequate to constitute damages for fraud.

Additionally, in addressing the issue of reasonable reliance, the Court misapprehends its own recent precedent. The *Foremost* decision clearly applies to this lawsuit, and clearly demonstrates Morris's reliance upon any alleged oral representation to be per se unreasonable.

The Court should reverse the judgment of the Mobile Circuit Court and remand for entry of a judgment as a matter of law in favor of Farmers.

ARGUMENT

I. The Court Misapprehended the Holding, and the Wisdom, of *Kidder*, Which Should be Overruled

Section I. of the Court's opinion addresses Farmers's argument that Morris could not have reasonably relied upon Farmers's alleged misrepresentations. The Court addresses that argument in three segments. The first of those segments, I.A., characterizes Farmers as arguing that the at-will nature of Morris's employment rendered his reliance unreasonable. In support of this analysis, the Court's opinion largely relies upon *Kidder v. AmSouth Bank, N.A.*, 639 So. 2d 1361 (Ala. 1994). The *Kidder* decision, however, has no bearing upon the reasonableness of Morris's alleged reliance. Rather, *Kidder* is an erroneous decision affecting a completely different element of the fraud analysis. ADLA respectfully contends that *Kidder* deserves examination under the damages element of the case, and seen in that light, *Kidder* and its progeny should be overruled.

A. The Law Before Kidder

Until *Kidder*, the law in Alabama was clear and predictable. The termination of one's at-will employment was "legally inadequate to show the element of damage in a fraud claim." *Burrell v. Carraway Methodist Hosps. of*

Alabama, Inc., 607 So. 2d 193, 196 (Ala. 1992); *see also Salter v. Alfa Ins. Co.*, 561 So. 2d 1050, 1054 (Ala. 1990) (the plaintiff "suffered no injury" due to any misrepresentation; even if other elements were proven, "the fraud claim would still fail" because plaintiff had not proven injury); *Stutts v. Sears, Roebuck & Co.*, 855 F. Supp. 1574, 1582 (N.D. Ala. 1994) (citing *Salter* and holding that "since an employee at will may be terminated at any time for any reason or for no reason, he cannot show injury from the fact of changes in his employment"); *Forbus v. Sears, Roebuck & Co.*, 958 F.2d 1036, 1042 (11th Cir. 1992) (noting that when plaintiffs were at-will employees, they "would have had no cause of action for ... fraud as a result of the termination of the employment relationship").

The reason for this "no-damage rule" has been noted in numerous fraud cases: a plaintiff alleging a misrepresentation must successfully demonstrate injury ***due to the fraud***. *Buchanan v. Collier*, 555 So. 2d 134, 136 (Ala. 1989); *see also Dickinson v. Land Developers Const. Co.*, 882 So. 2d 291, 305 (Ala. 2003) (Houston, J., concurring specially) (*quoting La Pesca Grande Charters, Inc. v. Moran*, 704 So. 2d 710, 713 (Fla. Dist. Ct. App.

1998) ("'There isn't *necessarily* damage where there is fraud, which is why no cause of action for fraud exists unless there is damage *due to fraud* that is separate from [other] damages.'") (Emphases in original.) When an employee is terminated, he does not suffer damage as a result of ***his reliance*** upon a pre-employment representation; his termination is necessarily attributable to his employer's permissible decision to terminate his employment for any reason, or for no reason at all. In other words, the employee has no right to continued employment because the employer can terminate him at any time and for any reason, so termination does not damage him; his reliance on a pre-employment representation therefore cannot result in damage when he is terminated.

B. *The Change Wrought by* Kidder

In 1994, this Court changed the law, and it did so on the basis of a little-known and little-analyzed decision that was probably never intended to address or repudiate the no-damage rule noted above.

In *Kidder v. AmSouth Bank, N.A.*, 639 So. 2d 1361 (Ala. 1994), the Court acknowledged that it was "well settled" that termination of at-will employment was legally

insufficient to satisfy the damage element of a fraud claim. 639 So. 2d at 1362, *citing Burrell* and *Salter*. The Court nonetheless altered that very principle, holding that under the circumstances of that case, termination **was** sufficient to constitute damages.

Justice Houston dissented from the holding in *Kidder*, explaining that a cause of action could be maintained for fraudulent inducement, but that it would have to occur outside the at-will context. *Kidder*, 639 So. 2d at 1363 (Houston, J., dissenting.) In other words, if the misrepresentation were that the employee would **not** be an at-will employee, then damage would be possible and a cause of action could be viable. (*Id.*)

C. From* Smith *to* Kidder*: Another "Phantom" Holding

The *Kidder* Court found support for its change in the no-damage rule by pointing to a previous decision, *Smith v. Reynolds Metals Co.*, 497 So. 2d 93 (Ala. 1986), a case concerning a high-schooler's summer employment. While *Smith* had reversed a summary judgment for an employer on a fraud claim, it had not analyzed that fraud claim in the context of the employee's at-will employment, despite having earlier addressed the at-will issue in the context of a

breach-of-contract claim. Rather, in the summary judgment context, *Smith* reviewed the plaintiff's factual allegations in light of a generic list of elements of fraud, and found that the plaintiff had shown a scintilla of evidence of those elements. This Court never acknowledged or analyzed the no-damage rule, possibly because the parties did not raise the issue.

In the years after its release, *Smith* was most commonly cited regarding the generic elements of fraud. *See, e.g.*, *Cont'l Elec. Co. v. Am. Employers' Ins. Co.*, 518 So. 2d 83, 88 (Ala. 1987); *Coaker v. Washington Cty. Bd. of Educ.*, 646 So. 2d 38, 42 (Ala. Civ. App. 1993); *Intercorp, Inc. v. Pennzoil Co.*, 877 F.2d 1524, 1534 (11th Cir. 1989); *Holman v. K-Mart Corp.*, 831 F. Supp. 836, 838 (M.D. Ala. 1993). It was **not** known for breaking new ground on the finer points of fraud in at-will employment situations.

Years after its release, however, the unremarkable *Smith* decision was suddenly thrust into a position of undeserved, and almost certainly unintended, importance by the 11th Circuit in *Forbus*, *supra*. There, the federal appellate court breathed strange new life into *Smith*. *Forbus* characterized *Smith* as a decision focused upon the

plaintiff's "employment status," and summarized this Court's holding thusly: "The court held that [the fraud] claim was not an attempt to get around the bar of suit on the basis of termination of employment status, but rather, was a claim that the plaintiff was fraudulently misled into believing that she would not be an employee at will." *Forbus*, 958 F.2d at 1042. One would be hard pressed to divine that sort of "holding" from the opinion in *Smith*, which stated no such thing. While *Forbus* was not cited in *Kidder*, the latter decision assigned *Smith* a similar degree of importance. *Smith* was the only case which *Kidder* cited as permitting a fraud action in an at-will employment context.

This evolution in Alabama law is strangely reminiscent of the Court's embrace of other now-discredited holdings which also took place in and around the 1990s. That era saw the Court make the leap from "reasonable reliance" to "justifiable reliance." *See Hickox v. Stover*, 551 So. 2d 259 (Ala. 1989). It also repeatedly saw a plurality or majority of the Court "double-down" on the supposed existence of a "phantom" equal protection clause in the Alabama Constitution — the result of what the Court later

characterized as a "lapse in judicial scholarship." *See Ex parte Melof*, 735 So. 2d 1172, 1185–86 (Ala. 1999). ADLA respectfully suggests that the judicial innovation which rewrote the law of fraud in *Kidder*, premised upon the generic and nonspecific outcome of *Smith*, is consistent with the same judicial activism that has been rejected by the voters of Alabama and virtually every justice of this Court over the past 20 years.

This Court should reject the approach of *Kidder* and return to the previous rule of law found in *Salter* and other cases: termination of at-will employment is legally insufficient damage to support a claim for fraud.

The Court's opinion asserts that embracing Farmers' position would require the overruling of *Kidder* and its progeny, and that doing so would eliminate fraud cases where the employee was an at-will employee. (Slip op., at 22.) While ADLA takes no position whether *Kidder* ***must*** be overruled in order to find for Farmers, ADLA respectfully urges that *Kidder* ***should*** be overruled. In doing so, ADLA acknowledges that overruling *Kidder* would certainly eliminate many fraud cases in the at-will employment context. However, this is precisely the sort of harsh

result that the law commands: Fraud requires actual damage and that damage must actually be caused by the alleged fraud. Termination of at-will employment does not actually damage the employee because he had no right to continued employment. Termination of at-will employment is the result of the employer's absolute prerogative, not the employee's reliance upon some representation made to the employee before or during employment.

II. Morris's Reliance was Unreasonable under *Foremost*

When Kyle Morris signed a Reserve Agent Appointment Agreement ("RAAA"), Farmers agreed to provide "approved [Farmers] manuals ... necessary to carry out the provisions of this Agreement." (Appendix A to Appellant's Initial Brief.) On the same day, January 15, 2007, Morris also signed a Horizontal Marketing Agreement ("HMA"), in which he agreed to "conform to good business practice[,] to conduct business in an honest and straight-forward manner[,] to comply with ... all rules and regulations governing [his] conduct, ... and to refrain from any action ... that conflicts with ... the interests of [Farmers]." (Appendix B to Appellant's Initial Brief.) The HMA referenced "information provided to Agent for purposes of

business under this Agreement, including ... manuals." (*Id.*) Additionally, Morris agreed that Farmers did not waive, even by its own conduct, its entitlement to demand compliance with the terms and conditions of the HMA or Farmers' "published rules, policies or manuals" (*Id.*)

The RAAA and HMA both took effect on February 8, 2007. Over the next 100 days, Morris met with trainer Steve Hunt, who shepherded Morris through information Morris would need to know as a Farmers agent. (Appendix C to Appellant's Initial Brief.) While Morris contends that Farmers let him "skip" some of the training because of his experience, (R. 588-589), he conceded that he did complete some of the main training, (R. 632-633), and the material he **did** complete included curriculum entitled "Reserve Agent Training v.03/03." (Appendix c to Appellant's Initial Brief.)

Included in that curriculum was a section entitled "Constructing Your Business." (*Id.*) The evidence shows that Morris reviewed and completed an assessment on that section of the curriculum. (R. 756-757.) Part of the "Constructing Your Business" section was a discussion of "Business Fundamentals," one of which was "Ethics." (Appendix D to Appellant's Initial Brief, at II-2 & II-18 through -19.)

The ethics material instructed Morris: "As a new agent with Farmers, you need to review the 'Farmers Code of Business Ethics and Professional Standards' in its entirety." (*Id.* at II-19.) The material directed Morris to the location of the ethics code, explained that this code of ethics would provide "greater detail describing the standards, principles, duties and responsibilities expected of an agent with Farmers." (*Id.*)

The Code of Business Ethics and Professional Standards is found in the Agent's Guide, (*id.*), which "used to be a big, fat, three-ring binder," but is now an online document. (R. 417.) Farmers' Senior Marketing Consultant, Steve Gockel, explained that this guide was given to a reserve agent and contained everything a career agent would possess. (R. 403-04.)

The Code of Ethics describes several typical conflicts of interest, the first of which is:

> "An outside financial interest, which could be looked upon as one, that might influence an individual's decision or actions.... An example would be ownership by [a Farmers agent's immediate family] of a substantial financial interest in a ... competitor of [Farmers]....
>
> "....

> "Accordingly, **an agent who offices with an agent ... of another insurance company, will be considered as maintaining a conflict of interest**."

(Appendix E to Farmer's Initial Appellant's Brief, at p. 9 of Agent's Guide, ¶ 1.) (Emphasis added.)

Morris testified that he would not have pursued agency with Farmers if his "association with [his] father and the Morris Insurance Agency was a problem." (*Id.* at 586–87.) Morris even testified that he read various agreements he was asked to sign and nothing therein said that his "relationship with the Morris Insurance Agency was unacceptable," and nothing therein "said anything to do with that being a conflict of interest." (*Id.* at 587.)

At trial, plaintiff's counsel characterized the process of locating the conflict-of-interest provision as an incredible ordeal. (*E.g.*, R. 775-780, 868-870.) The Court's opinion likewise seems to note as persuasive a demonstrative aid prepared by plaintiff's counsel laying out the "steps to which Morris had to go" to locate the ethics code. (Slip op., at 34.) Under the circumstances, however, this was not nearly the search for a needle in a haystack that it has been argued to be.

First, the ethics section of the curriculum — **which Morris testified he read** — did not tell Morris to "find" section 3, "find" the 7th of 13 categories, "go to" a given category in order to "find" a subsection, and "look at" a given paragraph. None of that would be hard, at all, of course, but the curriculum very simply instructed Morris to "review" the code of ethics "in its entirety." (App. D, at II-19.) All Morris had to do was review the table of contents, which would clearly direct him to the ethics code. At that point, Morris would then simply have to read the code of ethics in its entirety, as instructed, which would naturally lead Morris to "find," "go to," and "look at" all of the sections, categories, and language that plaintiff has characterized as such a Sisyphean task.

Not only is this not a difficult task, but in context, it should have easily guided Morris to the official "Farmers answer" to his question. Morris testified that he was diligently trying to verify whether his "association" with his father's insurance agency was a problem. (R. 586.) Thus, if Morris's testimony on that point is true, the ethics code would not only address his specific question but would ***naturally catch his eye*** if, as he assured

Farmers, he had diligently completed his training. The fact that Morris did not notice this provision indicates that Morris did not in fact read the ethics code, and his testimony that he did so, (R. 586-589), is irreconcilable with his failure to notice the provision. In short, the Farmers code of ethics unambiguously and unmistakably answered Morris's key question about whether he should continue efforts to become a career Farmers agent.

B. Morris's Reliance was Unreasonable

The question before this Court is therefore a simple one: Is Farmers' Code of Ethics a document which fits within this Court's preexisting *Foremost* framework? If so, then Morris is charged with reading the Code of Ethics and with knowledge of its contents, and Morris cannot successfully claim reasonable reliance upon any oral misrepresentation that conflicts with the written language in the Agent's Guide. If not, then Morris's reliance might be reasonable.

1. The Court's Analysis

The Court's opinion holds that one's reliance is unreasonable ***only*** where the true state of affairs is set forth in a "written agreement signed by the parties," (Slip

op. 29, *quoting* 37 Am. Jur. 2d *Fraud and Deceit* § 255 (2013)), or "written contract terms," (Slip op. at 29, *quoting Foremost Ins. Co. v. Parham*, 693 So. 2d 409, 421 (Ala. 1997)), and that *Foremost* does not apply to "documents other than the contract between the parties." (Slip op., at 30.) The Court cites *Alabama Elec. Co-op., Inc. v. Bailey's Const. Co.*, 950 So. 2d 280 (Ala. 2006), as a case supporting that very principle. Because, in the Court's view, *Foremost* cannot apply to an "extracontractual statement," the Court goes so far as to assert that Farmers is not even raising a *Foremost* argument. (Slip op., at 32-33.) Respectfully, the Court has misapprehended its own holdings, and Farmers' argument, in numerous ways.

2. **Foremost *Embraces Even the Ethics Code***

Foremost is not nearly as narrow as the Court has read it in this case. It embraces more than strictly contractual documents, and certainly extends to documents such as the Ethics Code found in the Farmers Agent's Guide.

Foremost returned Alabama jurisprudence to the "reasonable reliance" standard for fraud cases, whereby the reasonableness of a plaintiff's reliance upon a misrepresentation would depend upon what he could learn

from the "documents received in connection with a particular transaction." *Foremost Ins. Co.*, 693 So. 2d at 421. *Foremost* was intended to end the era of "ostrichism," where a party could bury his head in the proverbial sand as to information conveyed in documents pertaining to the transaction. *Alfa Life Ins. Corp. v. Colza*, 159 So. 2d 1240, 1251 (Ala. 2014); *Ex parte Caver*, 742 So. 2d 168, 172 (Ala. 1999).

Contrary to the Court's characterization in this case, *Foremost* **does not** limit the applicability of the reasonable reliance standard to documents constituting the actual contract. Rather, the language, "documents received in connection with a particular transaction" is substantially broader.

First, the document need not be one which the plaintiff signed. For instance, in *AmerUs Life Ins. Co. v. Smith*, 5 So. 3d 1200 (Ala. 2008), the plaintiff applied for life insurance and received the actual policies several weeks later. 5 So. 3d at 1202. The plaintiff did not sign policies, but the Court held that the plaintiff's failure to read those policies rendered his reliance unreasonable. *Id.* at 1211–13.

Second, the document in question need not actually be a "contract" of any sort. Both this Court, and federal courts operating under *Foremost*, have found all manner of "corollary" items to constitute documents received in conjunction with a transaction within the scope of *Foremost*:

- an insurer's "cost-benefit statement" - *AmerUs Life Ins. Co.*, 5 So. 3d at 1213–14;
- a premium schedule – *Baker v. Metro. Life Ins. Co.*, 907 So. 2d 419, 421–22 (Ala. 2005); *Alfa Life Ins. Corp. v. Green*, 881 So. 2d 987, 988–992 (Ala. 2003);
- a table of interest rates - *Liberty Nat. Life Ins. Co. v. Ingram*, 887 So. 2d 222, 226–227 (Ala. 2004);
- an insurance Policy Illustration – *Waldrup v. Hartford Life Ins. Co.*, 598 F. Supp. 2d 1219, 1232–33 (N.D. Ala. 2008);
- an employee handbook - *Hammons v. George C. Wallace State*, No. CIV.A. 04-0270-CG-M, 2005 WL 1907534, at *15 (S.D. Ala. Aug. 9, 2005);

- a claims administration handbook - *Holton v. Blue Cross & Blue Shield of S.C.*, 56 F. Supp. 2d 1338, 1345 (M.D. Ala. 1999); and
- a letter from an insurer to its policyholder **some nine months after** the alleged misrepresentation was made – *Waldrup*, *supra* at 1233-35.

Footnote 5 of the Court's opinion distinguishes "some of the universal-life-insurance cases," such as *AmerUS* and *Baker*, as involving a mixture of documents and noting that the Court did not squarely consider whether the "noncontractual" documents were permissible to consider. (Slip op., at 30 n.5.) This is certainly true. However, as ADLA has argued and as Justice Shaw's dissent makes plain, one need look no further than the actual language of *Foremost.* It includes nary a word about "contractual documents" and instead speaks in terms of documents received in conjunction with a transaction —— it matters not whether those documents happen to set out terms and conditions, or whether those documents are a step or two removed from the essential elements of the contract. The *Foremost* caselaw include plenty of "noncontractual" documents both inside and outside of the life insurance

context, and the content of those documents is the lynchpin on which the reasonableness of the plaintiff's reliance depends.

In short, *Foremost* embraces all manner of documents received in conjunction with a transaction. In the employment context, that naturally would include the many documents provided to an employee in regards to his employment — like an employee handbook, a manual for how to do the job, and the other written policies, procedures, rules, regulations, and requirements that companies provide to their employees. The Court's opinion in this case, which limits the application of *Foremost* to contract documents only, constitutes a break with many of the Court's previous opinions, as well as numerous federal cases interpreting Alabama law.

Not only has the Court erroneously rejected the application of *Foremost* to this case, but in the process, it has offered only brief analyses of two different cases which it cites as support for its analysis. First, in stating that extracontractual documents do not implicate *Foremost*, the Court cites *Alabama Elec. Co-op., Inc.*, *supra,* but appears to misapprehend not only the holding of

the case, but the context in which that case came about. There, AEC hired a construction company, Bailey's, and asked that AEC be included as an additional insured on Bailey's policy. The insurance agent for Bailey's sent AEC a "certificate of insurance" indicating that AEC was an additional insured. The policy, however, did not actually include AEC, an omission discovered only after a death on the property and a resulting lawsuit. Importantly, the certificate of insurance clearly explained that it was an informational tool, and that it did not create any rights not actually found in the policies. Also, AEC never sought the opportunity to review the actual insurance policy. Because AEC never saw the policy, and because even the certificate of insurance explained that it did not confer any actual rights, this Court held that AEC's reliance on the certificate was not reasonable.

In the case at bar, however, the Court reads *Alabama Elec. Coop.* to announce a different rule. The Court's opinion in this case reads *Alabama Elec. Coop.* to distinguish between the reasonableness of a plaintiff's reliance upon an alleged misrepresentation in a contractual document as opposed to a noncontractual document. The issue

in that case, however, was not whether a "noncontractual document" could reasonably be relied upon, as the Court suggests. Rather, the issue was whether the plaintiff could reasonably rely upon the certificate of insurance that specifically stated it was for informational purposes only and did not confer any actual rights. More importantly, whether a party can reasonably rely upon a representation in a noncontractual document as what the contract provides is a completely different question than whether a noncontractual document is sufficient, as a matter of law, to put a party on notice that oral representations regarding a contractual relationship are not true.

Alabama Elec. Coop. simply does not support the Court's approach in this case. The Code of Ethics put Morris on notice, as a matter of law, that he could not office with his father's agency, and his reliance upon alleged representations to the contrary were *per se* unreasonable, despite the fact the ethics code might not have been a "contractual document."

In a similar fashion, the Court mentions *Potter v. First Real Estate Co.*, 844 So. 2d 540 (Ala. 2002) as "holding that the plaintiffs were not barred by a

difficult-to-read provision in a survey that contradicted the oral representations upon which they had relied regarding whether the house they had purchased was located in a flood plain." The Court's parenthetical reference again portrays the case as establishing some sort of dividing line between "contractual" and "noncontractual" documents. This characterization of *Potter*, however, leaves much to be desired.

Potter concerned a real estate agent who was hired as a dual agent. She therefore represented the buyers and the sellers to an equal degree. In order to facilitate a sale, the agent purposefully provided the buyer —— her own client —— with an illegible and hard to read survey suggesting the property was not in a flood plain. She also provided a sales contract to the same effect. In truth, the property was in a flood plain. The *Potter* Court held that the buyer's reliance upon the agent was reasonable, but **not** simply because there was a "hard to read" document, but rather, because (1) the real estate agent had created a special relationship that lulled the plaintiffs into a false sense of confidence that she was representing them, **and** (2) because she employed an artifice——a purposefully

illegible survey——to make the plaintiff think the property was outside of a flood plain. The case at bar, of course, presents neither of those circumstances. While Farmers personnel trained Morris, no one purported to advise Morris on all matters pertinent to his employment. Moreover, Morris asserted that he did read the documents assigned to him, and has not contended that the ethics code was somehow illegible.

The Court's analysis of the reliance element is gravely flawed. Nearly every aspect of that analysis stands refuted by a string of cases from the Court itself. ADLA strongly urges the Court to reconsider its analysis. Alabama law clearly provides that Morris's reliance upon Farmers' alleged misrepresentations was unreasonable. Documents he claimed to have read put him on notice, as a matter of law, in unmistakable terms, that officing with a competitor was a conflict of interest. Whether Morris actually failed to read the relevant language or whether he simply disregarded it, he cannot be said to have reasonably relied upon the alleged misrepresentations supposedly made by Farmers' employees.

CONCLUSION

ADLA respectfully urges the Court to reconsider its holdings as set forth in the opinion. The Court misapprehended well-settled Alabama law as it pertains both to the reliance and damages elements of fraud.

Because Morris was an at-will employee of Farmers, his termination was legally inadequate to constitute damage under Alabama fraud law. While *Kidder* and its progeny hold otherwise, they are mistaken and should be overruled.

Farmers' Code of Ethics clearly defined Morris's choice to office with his competitor father as a conflict of interest. Morris claimed he had read that ethics code, but if so, he clearly did not take it to heart. The existence of that provision put Morris on notice of Farmers' policy as to officing with a competitor, and his reliance on alleged oral misrepresentations to the contrary was *per se* unreasonable.

The Court should grant the application for rehearing, and should then reverse the judgment of the trial court and remand the cause to the trial court for entry of a judgment as a matter of law in favor of Farmers on Morris's meritless fraud claims.

Respectfully submitted,

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