



And, as to both questions, there is no clear controlling precedent in the decisions of the Supreme Court. This Court then offered the parties the opportunity to propose a concise statement of facts pursuant to Rule 18(d), Ala. R. App. P.; that statement is incorporated into the Clerk's certification.

Moreover, to ensure that the Supreme Court is given "the context in which the question[s] at issue arose," this Court has determined that its prior orders and the entire record in this matter should be provided to the Supreme Court. See *American Nat'l Red Cross v. ASD Specialty Health Care, Inc.*, 325 F. Supp. 2d 1339, 1340 (S.D. Ala. 2002) (Granade, J.) (noting that "the Eleventh Circuit commonly includes the entire record when certifying a question to the Alabama Supreme Court") (citing *Tillman v. R.J. Reynolds Tobacco*, 253 F.3d 1302, 1308 (11th Cir. 2001) ("The entire record, including the briefs of the parties, is transmitted herewith.")).

Further, just as in *Tillman* and *ASD*, "the phrasing of this court's certificate is not intended to restrict the scope of inquiry of the Supreme Court of Alabama." *ASD Specialty Health Care*, 325 F. Supp. 2d at 1340-41 (citing *Tillman*, 253 F.3d at 1308; *Spain v. Brown & Williamson Tobacco Corp.*, 230 F.3d 1300, 1302 (11th Cir. 2000)). "That means, among other things, that if [this Court has] overlooked or mischaracterized any state law issues or inartfully stated any of the questions [it has] posed, [the Court] hope[s] the Alabama Supreme Court will feel free to make the necessary corrections." *Id.* at 1341 (quoting *Tillman*, 253 F.3d at 1308 (quoting, in turn, *Spain*, 230 F.3d at 1312)).

**DONE and ORDERED** this the 22nd day of April, 2013.

s/WILLIAM E. CASSADY  
**UNITED STATES MAGISTRATE JUDGE**