IN THE SUPREME COURT OF IOWA

Supreme Court No. 19-1306
Iowa District Court for Story County LACV050943

DEBRA GRIES,
Plaintiff-Appellant,

v.

AMES ECUMENICAL HOUSING, INC.,
d/b/a STONEHAVEN APARTMENTS,
Defendants-Appellee,

APPEAL FROM THE IOWA DISTRICT COURT FOR STORY COUNTY,
THE HONORABLE JAMES A. McGLYNN

FINAL AMICUS CURIAE BRIEF of IOWA DEFENSE COUNSEL ASSOCIATION, IOWA INSURANCE INSTITUTE and IOWA ASSOCIATION OF BUSINESS AND INDUSTRY

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STATEMENT OF THE IDENTITY OF THE AMICI CURIAE

The Iowa Defense Counsel Association is a group of more than 350 lawyers and insurance-claims professionals who are actively engaged in the practice of law or in work relating to the handling of claims and the defense of legal actions. The Iowa Insurance Institute is an association of Iowa's property and casualty insurance companies who, collectively, insure two million Iowans and employ 8,000 more. It is committed to promoting a cost-effective legislative and regulatory environment conducive to the ability of property and casualty insurers to write reasonably priced coverage. The Iowa Association of Business and Industry is the largest business network in the state of Iowa, representing over 1,500 business members that employ over 330,000 Iowans. The mission of the Iowa Association of Business and Industry is to nurture a favorable business, economic, governmental and social climate within the state of Iowa so our citizens can have the opportunity to enjoy the highest possible quality of life.

The interests of the Iowa Defense Counsel Association, Iowa Insurance Institute, and Iowa Association of Business and Industry represent the interests of premises liability defendants and their insurers who frequently encounter litigation arising out of slip and fall injuries sustained

during periods of inclement weather. For years the traditional understanding and application of the continuing storm doctrine has appropriately allowed for cases without merit to be disposed of by the district courts as a matter of law, promoting both judicial and economic efficiency. The brief of the amici curiae seeks to provide helpful perspective as to why the continuing storm doctrine remains an appropriate principle pursuant to Iowa law and policy and why this Court must reject Plaintiff's invitation to abandon the doctrine.

STATEMENT OF THE PREPARATION OF BRIEF

Pursuant to Iowa Rule of Appellate Procedure 6.906(4)(d), the undersigned states no counsel of record of any party authored any part of this brief or contributed money to fund the preparation or submission of the brief. The Iowa Defense Counsel Association, Iowa Insurance Institute, and Iowa Association of Business and Industry are the entities that contributed money to fund the preparation and submission of the brief.

ARGUMENT

For well over sixty years Iowa courts have endorsed and applied the "continuing storm doctrine."[1] *Reuter v. Iowa Trust & Savings Bank,* 57 N.W.2d 225, 227 (Iowa 1953). The doctrine fairly and reasonably instructs that landowners do not owe a duty to clear snow, ice, or moisture from their property until after cessation of the inclement weather and such landowners are permitted a reasonable time to complete the task following cessation. *Id.* (holding "[landowner] is permitted to await the end of the storm and a reasonable time thereafter to remove ice and snow from an outdoor entrance walk, platform, or steps."). Contrary to the suggestion of the Plaintiff, the continuing storm doctrine should not be abandoned due to the adoption of the Restatement (Third) of Torts: Liability for Physical and Emotional Harm section 7 (hereafter "Restatement (Third)") by the Iowa Supreme Court in *Thompson v. Kaczinski*, 774 N.W.2d 829, 834 (Iowa 2009). The only change in Iowa law following *Thompson* was that foreseeability was removed from the duty analysis; however, *Thompson* and the case law that has followed reaffirmed all other duty law that pre-dated *Thompson*,

[1] The doctrine is alternatively referred to as the "storm in progress" doctrine. *See Rochford v. G.K. Dev., Inc.*, 845 N.W.2d 715, 718 (Iowa Ct. App. 2014). In this Brief the term "continuing storm doctrine" will be used throughout for the sake of clarity and simplicity.

necessarily including the continuing storm doctrine. *McCormick v. Nikkel & Assocs., Inc.*, 819 N.W.2d 368, 371 (Iowa 2012).

The continuing storm doctrine has been reaffirmed for good reason—the doctrine has always and continues to rest upon sound public policy grounds. The first key rationale supporting the doctrine is the longstanding principle that a landowner is not an insurer of safety, but rather owes only a duty of reasonable care to keep the property in a reasonably safe condition. *Reuter*, 57 N.W.2d at 226. The second key rationale is that the doctrine recognizes the impracticality and futility of requiring a landowner to clear slippery conditions when the ongoing inclement weather will quickly restore the slippery conditions. *Id.*

This court should be wary of Plaintiff's invitation to abandon the continuing storm doctrine when the Plaintiff has not supplied an example of any jurisdiction that has taken such a measure. In reality, rather than abandoning the doctrine, a survey across jurisdictions reveals that more and more jurisdictions have explicitly adopted or reaffirmed the continuing storm doctrine in recent years.

Ultimately, the continuing storm doctrine has functioned well in Iowa and elsewhere. For these reasons and the reasons provided in more detail below, the amici respectfully request that the Court reject Plaintiff's

invitation to abandon the doctrine and affirm the summary judgment ruling of the district court in favor of the Defendant in the case at bar.

I. THE CONTINUING STORM DOCTRINE IS CONSISTENT WITH IOWA DUTY LAW AND IOWA CASE LAW SUPPORTS ADHERENCE TO THE DOCTRINE.

As explained in Defendant-Appellee's Brief, the continuing storm doctrine is consistent and harmonious with Restatement (Third) section 7 and the *Thompson* case that adopted this Restatement provision.

Not only is the continuing storm doctrine consistent with Restatement (Third) section 7, the doctrine is a *reaffirmed* legal principle in the state of Iowa. Contrary to Plaintiff's argument, the decision of the Iowa Supreme Court in *Thompson* adopting Restatement (Third) section 7 did not alter pre-existing law of duty in Iowa; rather, *Thompson* "reaffirmed" Iowa's prior law governing the element of duty in negligence cases. This has been made abundantly and repeatedly clear in the decisions of the Iowa Supreme Court following *Thompson*. For example, in the subsequent case of *McCormick v. Nikkel & Associates*, the Iowa Supreme Court explained the narrow effect of the *Thompson* decision as follows:

> Historically, the duty determination focused on three factors: the relationship between the parties, the foreseeability of harm, and public policy. In *Thompson*, we said that foreseeability should not enter into the duty calculus but should be considered only in determining whether the defendant was negligent. **But**

> **we did not erase the remaining law of duty; rather, we reaffirmed it.** In short, a lack of duty may be found if either the relationship between the parties or public considerations warrants such a conclusion.
>
> In *Van Fossen*, **we made clear again that our previous law of duty was otherwise still alive and well**.

McCormick, 819 N.W.2d at 371 (internal citations omitted) (emphasis added). In *Huck v. Wyeth* the Iowa Supreme Court added that it has "made clear" that "adoption of section 7 of the Restatement (Third) of Torts in *Thompson* **did not supersede our precedent limiting liability**… ." *Huck v. Wyeth, Inc.*, 850 N.W.2d 353, 375 (Iowa 2014) (emphasis added).

Consistent with the directive that the *Thompson* decision and adoption of Restatement (Third) section 7 did not supersede or overrule existing precedent providing for limited duties, the Iowa appellate courts have continually upheld such prior precedent in their post-*Thompson* decisions. The following cases are examples:

- *Van Fossen v. MidAmerican Energy Co.*, 777 N.W.2d 689, 698 (Iowa 2009).

  In *Van Fossen*, the court enforced the control rule that pre-dated *Thompson* and determined no duty was owed as a matter of law for harm that arose out of the work done by an independent contractor on premises that were turned over to the control of the independent contractor by the employer of the independent contractor. *Id.*

- *Feld v. Borkowski*, 790 N.W.2d 72, 76–77 & n. 1 (Iowa 2010).

  In *Feld*, the court held the contact-sports rule that pre-dated *Thompson* remained good law and precluded a tort claim arising from injury to a player during a high school intramural softball game, noting that the Restatement (Third) "expresses the notion that a reasonable-care duty applies in each case *unless* a special duty, like the contact-sports exception, is specifically recognized." *Id.*

- *McCormick v. Nikkel & Assocs., Inc.*, 819 N.W.2d 368, 374 (Iowa 2012).

  In *McCormick*, the court applied the control rule that pre-dated *Thompson* and held an independent contractor did not owe a duty to employees of the entity that hired the independent contractor after control of the worksite was returned to the employer by the independent contractor. *Id.*

- *Huck v. Wyeth, Inc.*, 850 N.W.2d 353, 376 (Iowa 2014).

  In *Huck*, the court affirmed the product-identification requirement that pre-dated *Thompson* and held name brand drug manufacturers owe no duty to consumers of generic drugs. *Id.*

- *Estate of McFarlin v. State*, 881 N.W.2d 51, 59 (Iowa 2016).

  In *McFarlin*, the court stated "the public-duty doctrine remains alive and well in Iowa" and applies to preclude liability of the state when the state's duty is owed to the general public rather than to a particularized group of persons. *Id.*

Additionally, in a recent case of first impression regarding the duty element in a negligence case the Iowa Supreme Court reiterated that, post-*Thompson*, the decision as to "whether a duty exists is a policy decision based upon all relevant considerations that guide [the court] to conclude a particular person is entitled to be protected from a particular type of harm." *Estate of Gottschalk by Gottschalk v. Pomeroy Dev., Inc.*, 893 N.W.2d 579, 586 (Iowa 2017). And the general duty of care is properly limited by the court when "an articulated countervailing principle or policy warrants denying or limiting liability in a particular class of cases." *Id.*

Thus, the *Thompson* decision, and the adoption of Restatement (Third) section 7 therein, does **not** provide a directive for abandonment of the continuing storm doctrine. Rather, *Thompson* and the subsequent decisions of the Iowa Supreme Court affirm and validate the view that limitations on duty in negligence cases, such as the continuing storm doctrine, remain good law. Specifically with regards to the present case, the

Iowa Supreme Court long ago decided the continuing storm doctrine's limitation or suspension of the general duty of care is supported by appropriate principles or policies. As further explained below, those principles and policies remain important and valid.

II. THE RATIONALE THAT HAS HISTORICALLY SUPPORTED THE CONTINUING STORM DOCTRINE REMAINS THE SAME IN THE PRESENT DAY.

The public policy rationale that underpins the continuing storm doctrine has been well explained by the Iowa Supreme Court and by courts in other jurisdictions applying the same rule. That rationale applies equally today as it did when the doctrine was first adopted.

As previously noted, when the Iowa Supreme Court adopted what has now been termed the continuing storm doctrine, the court pointed to two main principles in support of the rule. First, the court recognized that, while landowners owe a reasonable duty of care to keep their premises reasonably safe for invitees or tenants, landowners are "not however an insurer." *Reuter*, 57 N.W.2d at 226. Keeping property entirely safe in all respects—the obligation of an insurer—is quite a different charge from taking reasonable steps to keep property safe and landowners are only required to do the latter. *Id.* Moreover, it is recognized that it is ultimately impossible to wholly insure safety and the continuing storm doctrine was developed to

address this reality. As one treatise explains, "[the doctrine] evolved in recognition of the realities of problems caused by winter weather, that is, as a common sense rule arising from the fact that snow and ice conditions are unpredictable, natural hazards **against which no one can insure** and which in their nature cannot immediately be alleviated." 3 Premises Liability 3d § 49:16.10 (2019 ed.).

The Minnesota Supreme Court similarly recognized this principle in adopting the continuing storm doctrine, stating: "Any rule to the contrary [of the continuing storm doctrine] would impose upon the [landowner], as an inviter, a duty of extraordinary care which it does not have, or erroneously constitute it an insurer of the safety of invitees. *Mattson v. St. Luke's Hosp. of St. Paul*, 89 N.W.2d 743, 746-47 (Minn. 1958). A number of other jurisdictions are in accord. *See, e.g.*, *Munsill v. United States*, 14 F. Supp. 2d 214, 221 (D.R.I. 1998) ("A business invitor, like a landlord, **is not an 'insurer.'** … Requiring a business owner to remove snow before a storm ends would hold him to an extraordinary standard of care, forcing him, in effect, to become an insurer of the safety of business invitees." (emphasis added)); *Martin v. Safeway Stores Inc.*, 565 P.2d 1139, 1141 (Utah 1977) ("Owners of stores, banks, office buildings, theaters or other buildings where the public is invited to come on business or for pleasure **are not insurers**

against all forms of accidents that may happen to any who come. It is not the duty of persons in control of such buildings to mop the sidewalk dry or take other steps necessary to prevent the accumulation of moisture on the sidewalk that might freeze and create an icy condition." (emphasis added)).

The second main rationale the Iowa Supreme Court relied upon when adopting the continuing storm doctrine was the futility and impracticability of requiring a landowner to continuously clear slippery surfaces during the pendency of inclement weather. Specifically, the court stated: "The general controlling principle is that changing conditions due to the pending storm render it inexpedient and impracticable to take earlier effective action, and that ordinary care does not require it." *Reuter*, 57 N.W.2d at 227 (quoting *Walker v. Mem'l Hosp.*, 45 S.E.2d 898, 902 (Va. 1948)). Stated otherwise by the Iowa Supreme Court:

> This court has acknowledged "[t]he feebleness of human ... efforts in attempting to cope with the power of the elements." The continuing-storm doctrine suspends a property owner's general duty to exercise reasonable care in warning of or removing snow and ice hazards until a reasonable time after the storm because continually clearing ice and snow during an ongoing storm would be impracticable.

Alcala v. Marriott Int'l, Inc., 880 N.W.2d 699, 711 (Iowa 2016) (internal citations omitted).

The impracticability of clearing slippery surfaces during a continuing storm is "because the continuance of the storm would soon render the [surface] as slippery as before." *Walker*, 45 S.E.2d at 902; *see also Wroblewski v. Williams*, 103 N.Y.S.3d 154, 155 (N.Y. App. Div. 2019) ("The storm in progress rule is designed to relieve property owners of the obligation to shovel snow while continuing precipitation or high winds are simply re-covering walkways and driveways as fast as they are cleared."); *Mattson*, 89 N.W.2d at 745 ("Since a storm produces slippery conditions as long as it lasts, it would be unreasonable to expect the possessor of the premises to remove the freezing precipitation as it falls." (emphasis added)). One federal district court keenly analogized, "Shoveling against a snowstorm is like shoveling sand against the tide; [thus], requiring a [landowner] to implement snow removal during a snowstorm is highly inexpedient and impractical." *Munsill*, 14 F. Supp. 2d at 221. And a Vermont court provided the following commonsense summary of this principle:

> As Vermonters are aware, shoveling out too early can waste resources and produce no appreciable difference. No court in Vermont would expect a landlord to shovel her driveway six times a day just because it kept snowing. Contrapositively, we can say that after the storm, an owner does have a responsibility to dig out within a reasonable time.

Turmel v. University of Vermont, No. S0980-01CNCV, 2004 WL 5460386 (Vt. Super. Ct. Apr. 20, 2004). The Supreme Court of Rhode Island further explained the impracticability issue in a case applying the continuing storm doctrine as follows: "A landlord is not required to be at his property, shovel in hand, catching the flakes before they hit the ground. He has reasonable time after the storm has ended to commence his removal effort." *Barenbaum v. Richardson*, 328 A.2d 731, 734 (R.I. 1974).

The impracticability principle that supported adoption of the continuing storm doctrine decades ago remains unabated in the present day—inclement weather continues as it always has and it remains futile to act to remedy slippery conditions created by such weather until the weather conditions have relented.

In addition to these main public policy reasons in support of the continuing storm doctrine, courts have recognized the doctrine is important because it promotes the avoidance of risk of injury to the landowner. The Supreme Court of Virginia smartly recognized, "It would be an unreasonable rule which would impose upon an inviter the necessity of repeated excursions into the storm, **with the attendant risks of exposure and injury to himself**, in order to relieve the invitee of all risk from this natural hazard." *Walker*, 45 S.E.2d at 907 (emphasis added).

Moreover, courts have concluded the continuing storm doctrine is supported by the reality that the storm creating the potential risk is an uncontrollable force of nature that was not instituted by the landowner and is equally apparent to an invitee or tenant who goes outdoors as it is to the landowner. *Mattson*, 89 N.W.2d at 746. Therefore, the dangers that arise from "recent or continuous" precipitation of a storm are "normal hazards of life, for which no owner or person in possession of property is held responsible." *Goodman v. Corn Exch. Nat. Bank & Tr. Co.*, 200 A. 642, 643 (Pa. 1938). In such circumstances, a landowner "is under no duty to reconstruct or alter the premises so as to obviate known and obvious dangers." *Phillips v. Superamerica Grp., Inc.*, 852 F. Supp. 504, 505 (N.D.W. Va. 1994), *aff'd*, 54 F.3d 773 (4th Cir. 1995); *see also Finnigan v. United States*, No. 5:15-CV-3515-BHH-KDW, 2016 WL 5858715, at *6 (D.S.C. Aug. 5, 2016) (applying continuing storm doctrine partially based on the reasoning that "a landowner generally does not owe a duty to warn others of open and obvious conditions on the property").

A final important consideration that this Court must take into account is that the principle of the continuing storm doctrine has been settled, stable, and well-ordered for decades. The doctrine effectively balances the interests of both landowner and pedestrian and provides certainty as to the obligations

of the landowner and notice to pedestrians to be wary of the conditions around them during periods of inclement weather, which are frequent and inexorable in the state of Iowa. To abandon the doctrine at this juncture would cause uncertainty and confusion in an area of the common law that is well-settled and would contravene principles of stare decisis and legislative acquiescence. *State v. Brown*, 930 N.W.2d 840, 854 (Iowa 2019) ("Stare decisis 'is an important restraint on judicial authority and provides needed stability in and respect for the law.'"). If there is a concern that the continuing storm doctrine is unjust, unreasonable, or offensive to the general populace, it must be observed that both the legislature and the electorate have had decades to take action and devise a different rule. The fact the doctrine has been recognized and applied in Iowa for decades, and no legislative undertaking has occurred to alter it, unmistakably supports the conclusion the continuing storm doctrine is a just and reasonable rule and should be maintained. *McElroy v. State*, 703 N.W.2d 385, 395 (Iowa 2005) ("we often infer legislative assent to our precedents from prolonged legislative silence").

Without the doctrine, cases that clearly should be summarily resolved by the trial court will no longer be subject to efficient resolution; rather, landowners will be compelled to engage in wasteful litigation in order to

reach the rightful result. *See Turmel*, No. S0980-01CNCV, 2004 WL 5460386 ("[R]efusal to adopt the Storm in Progress Rule is the guarantee that slip and fall cases will almost always be decided by juries and that owners are left with a nebulous, perpetual potential for liability without any judicial guidance about the limit of their duty of care during storms."). Furthermore, safety will be undermined—not promoted—by abandonment of the doctrine. Landowners will be forced to repeatedly subject themselves, their employees, and/or independent contractors to naturally hazardous conditions that are ongoing. And pedestrians will be provided a false sense of security that hazardous conditions are being ameliorated when such a result is actually impossible during a continuing storm.

In sum, the public policy reasons that caused the Iowa Supreme Court to recognize and adopt the continuing storm doctrine remain as valid today as they were decades ago. Based on this precedent and the supporting public policy rationale, this Court should adhere to the rule that has worked well in this jurisdiction for decades. Therefore, Plaintiff's request to abandon the continuing storm doctrine should be rejected and the Order granting summary judgment in favor of Defendant should be affirmed.

III. THE SEVERITY OF THE STORM CANNOT YIELD DIFFERING RESULTS UNDER THE CONTINUING STORM DOCTRINE.

The continuing storm must be applied to all storms that create hazardous conditions, whether they are blizzards or accumulations of ice while temperatures hover around freezing. All of the policy rationale set out above applies equally, regardless of the particular type of storm. It is just as futile and impractical to clear a glazing of ice that accumulates on the pavement during a mist or drizzle event as it is to continually shovel snow during a blizzard. Moreover, it would be folly to attempt to draw any distinction as to whether a particular storm is sufficiently severe as to trigger the continuing storm doctrine because all can agree that weather conditions are unpredictable—especially at the micro level of what will be experienced at an individual property. Not until the last flake has fallen or the last drop has been wrung from the sky is the severity of particular storm actually known. Thus, to draw a distinction, as Plaintiff suggests, that "mist" is not sufficient to prompt the application of the continuing storm doctrine is clearly erroneous.

In the present case, it is undisputed that Plaintiff, herself, testified it was actively misting at the time she slipped and was injured. Plaintiff argues misting conditions are insufficiently severe to apply the continuing

storm doctrine; however, the argument advanced by Plaintiff has been made—and roundly rejected—in Iowa and in a number of other jurisdictions for good reason. First, the Iowa Court of Appeals addressed and appropriately rejected a similar argument in *Rochford v. G.K. Dev., Inc.*, 845 N.W.2d 715, 718 (Iowa Ct. App. 2014). In *Rochford*, the plaintiff testified to ongoing freezing rain at the time of her slip and fall. *Id.* Confronted with the issue of how severe weather must be in order to implicate the continuing storm doctrine, the court of appeals stated the doctrine "is not limited to situations where blizzard conditions exist; it also applies in situations where there is some type of less severe, yet still inclement winter weather." *Id.* Thus, turning to the "freezing rain and mist" that was at issue in the case, the court reasonably and correctly concluded that "[w]hatever this 'weather event' is called, … it was of sufficient significance to qualify for application of the continuing storm doctrine." *Id.* at 716-18.

Courts in other jurisdictions have addressed the issue even more directly. For example in *Cash v. East Coast Property Management, Inc.*, the plaintiff described the conditions at the time of her slip and fall as a "misty drizzle" and that she "did not see any snow, sleet, or freezing rain" that day. *Cash v. East Coast Prop. Mgmt., Inc.*, No. 08C-08-213-MMJ, 2010 WL 2336867, at *1 (Del. Super. Ct. June 8, 2010), *aff'd*, 7 A.3d 484 (Del. 2010).

The plaintiff contended the weather was not sufficiently severe to trigger the continuous storm doctrine. *Id*. at *2. The court dismissed the contention, finding "that a landowner has no legal duty to begin ice removal until precipitation has stopped, **regardless of the severity of the storm**." *Id.* (emphasis added).

The Supreme Court of Virginia held similarly in *Amos v. NationsBank, N.A.*, 504 S.E.2d 365, 366 (Va. 1998). There the plaintiff asserted the weather conditions were "cold with a light drizzle falling" and contended such conditions did not implicate the continuous storm doctrine. The court disagreed, stating "a storm does not have to be 'raging' in order for a business inviter to wait until the end of the storm before removing ice and snow from its premises." *Id.* Thus, the court held the defendant was entitled to a favorable judgment as a matter of law. *Id.* Numerous decisions from other jurisdictions are in accord. *Laine v. Speedway, LLC*, 177 A.3d 1227, 1233–34 (Del. 2018) ("The rationale for the rule rests upon the existence of a fairly continuous natural accumulation of ice and/or snow created by ongoing precipitation. The rule does not depend upon whether that precipitation is in the form of freezing rain, snow, sleet or a combination of all three."); *Sherman v. New York State Thruway Auth.*, 52 N.E.3d 231, 232 (N.Y. 2016) (applying continuing storm doctrine where facts showed

only an "intermittent wintry mix" of snow, sleet and rain with near freezing temperatures).

IV. A SURVEY OF OTHER JURISDICTIONS REVEALS THE CONTINUING STORM DOCTRINE REMAINS A ROBUST LEGAL DOCTRINE THROUGHOUT THE NATION.

A review of other jurisdictions reveals a large number of jurisdictions have adopted the continuing storm doctrine and continue to apply it. In addition, jurisdictions that have taken up the matter as an issue of first impression in recent years appear to uniformly recognize the continuing storm doctrine as the ideal rule. The amici have located no jurisdiction that has decided to abandon the doctrine in recent years. A survey of key cases from jurisdictions throughout the country showing continued and growing adherence to the continuing storm doctrine follows:

- Delaware:

  The Delaware courts adopted the continuing storm doctrine long ago, citing to and relying upon the Iowa Supreme Court's decision in *Reuter*. *Young v. Saroukos*, 185 A.2d 274, 282 (Del. Super. Ct. 1962), *aff'd*, 189 A.2d 437 (Del. 1963). Thereafter, Delaware courts have repeatedly reaffirmed doctrine, most recently in *Laine v. Speedway, LLC*, 177 A.3d 1227, 1233 (Del. 2018), which

bears a close factual resemblance to the case at bar, in that it involved light freezing drizzle and rejected a request for abandonment of the doctrine.

- Minnesota:

  Iowa's northern neighbor was an early adopter of the continuing storm doctrine. *Mattson*, 89 N.W.2d at 743. The Minnesota courts continue to apply the doctrine with regularity. *See St. Aubin v. Casey's Retail Co.*, No. A15-1306, 2016 WL 764478, at *4 (Minn. Ct. App. Feb. 29, 2016) (affirming summary judgment for landowner where plaintiff admitted it had been drizzling or misty and temperature hovered around freezing).

- Virginia:

  Virginia was also an early adopter of the continuing storm doctrine. *Walker*, 45 S.E.2d at 904. The Iowa Supreme Court relied heavily upon the Virginia Supreme Court's *Walker* decision when adopting the doctrine. *Reuter*, 57 N.W.2d at 943. Virginia courts continue to embrace the continuing storm doctrine. *See Durvin v. United States*, No. 3:11CV575, 2012 WL 1999862, at *3 (E.D. Va. June 4, 2012).

- Connecticut:

  The Connecticut Supreme Court adopted the continuing storm doctrine in *Kraus v. Newton*, 558 A.2d 240, 243 (Conn. 1989), and the Connecticut courts have continued to apply the doctrine in recent decisions. *See Leon v. DeJesus*, 2 A.3d 956, 958 (Conn. App. 2010); *see also Kloers v. Bridegeport Wilmot Apartments, Inc.*, No. FBTCV166058766S, 2017 WL 6417904, at *3 (Conn. Super. Ct. Nov. 20, 2017).

- Kansas:

  Kansas is a more recent adopter of the continuing storm doctrine. *Jones v. Hansen*, 867 P.2d 303, 311 (Kan. 1994) (holding the doctrine is "supported by sound public policy"). And Kansas courts have continued to apply the doctrine in subsequent cases. *See Kaminski v. United States*, No. 14-2630-DDC-JPO, 2017 WL 5970824, at *9 (D. Kan. Dec. 1, 2017).

- New York:

  New York's highest court recognized the rule and rationale of the continuing storm doctrine as early as 1888. *Palmer v. Pennsylvania Co.*, 18 N.E. 859 (N.Y. 1888). Strict adherence to the

doctrine continues in the present day. *See Sherman v. New York State Thruway Auth.*, 52 N.E.3d 231, 232 (N.Y. 2016).

- Tennessee:

Tennessee adopted the continuing storm doctrine in 1960. *Grizzell v. Foxx*, 348 S.W.2d 815, 817 (Tenn. 1960). And recent decisions in the jurisdiction continue to apply the doctrine in the same form. *See Clifford v. Crye-Leike Commercial, Inc.*, 213 S.W.3d 849, 853 (Tenn. Ct. App. 2006).

- Rhode Island

The Supreme Court of Rhode Island adopted the continuing storm doctrine in 1971. *Fuller v. Hous. Auth. of City of Providence*, 279 A.2d 438, 441 (R.I. 1971). The state courts have continued to adhere to the doctrine in recent cases. *See Berardis v. Louangxay*, 969 A.2d 1288, 1291 (R.I. 2009).

- South Carolina:

In a federal case in 2016, the U.S. District Court for South Carolina court recently accepted and applied the continuing storm doctrine in a case proceeding under the Federal Tort Claims Act. *Finnigan*, No. 5:15-CV-3515-BHH-KDW, 2016 WL 5858715, at *9.

- West Virginia:

  In a 1995 decision, the U.S. District Court for the Northern District of West Virginia determined the continuing storm doctrine to be consistent with West Virginia law and adopted and applied it. *Phillips*, 852 F. Supp. at 506.

Based on this survey of jurisdictions, it is plain that the doctrine is well-reasoned and provides just results; otherwise jurisdiction-upon-jurisdiction would not have adopted the doctrine and would not continue to apply it. As important, this jurisdictional survey reveals there is no retreat from the doctrine, which is further evidenced by the failure of Plaintiff to cite to even a single jurisdiction that has abandoned the doctrine in recent years.

CONCLUSION

For the reasons set forth above, this Court should reaffirm the continuing storm doctrine as an appropriate statement of Iowa law and should affirm the district court Order applying the doctrine to the present case and granting of summary judgment in favor of the Defendant.

Respectfully submitted,

/s/ Thomas M. Boes

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CERTIFICATE OF COMPLIANCE

This brief complies with the typeface requirements and type-volume limitation of Iowa Rules of Appellate Procedure 6.903(1)(d); 6.903(1)(g)(l); and 6.906(4) because this brief has been prepared in a proportionally spaced typeface using Times New Roman font in 14 point size and contains 4,951 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(l).

/s/ Thomas M. Boes December 4, 2019
Thomas M. Boes AT0001048 Date

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies a copy of this Final Amicus Curiae Brief was filed with the Clerk of the Iowa Supreme Court via EDMS and was served via EDMS on December 27, 2019.

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