ELECTRONICALLY FILED JUN 12, 2023 CLERK OF SUPREME COURT

IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 22-2085

BANKERS TRUST COMPANY,
Appellant,

v.

CITY OF DES MOINES, IOWA,
Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY,
HONORABLE JOSEPH SEIDLIN

APPELLEE'S FINAL BRIEF

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[1] All provisions of the Des Moines Municipal Code are available online at https://library.municode.com/ia/des_moines/codes/code_of_ordinances.

STATEMENT OF ISSUES

4.1. Des Moines has the authority to impose liability on adjacent property owners for failure to maintain sidewalks.

Madden v. City of Iowa City, 848 N.W.2d 40 (Iowa 2014)
Iowa Const. art. III, § 38A
Hensler v. City of Davenport, 790 N.W.2d 569 (Iowa 2010)
Iowa Code § 364.12(2)
Iowa Code § 364.12(2)(*b*)
Iowa Code § 364.12(2)(*c*)
City of Davenport v. Seymour, 755 N.W.2d 533 (Iowa 2008)
Iowa Code § 364.12(2)(*d*)

4.2. Des Moines ordinances impose liability on adjacent property owners.

City of Des Moines Municipal Code § 102-1
Municipal Code § 102-2
Madden v. City of Iowa City, 848 N.W.2d 40 (Iowa 2014)
Iowa Code § 364.12(2)(*b*)
Peffers v. City of Des Moines, 299 N.W.2d 675 (Iowa 1980)
Fritz v. Parkison, 397 N.W.2d 714 (Iowa 1986)
McNally & Nimergood v. Neumann-Kiewit Const., Inc., 648 N.W.2d 564 (Iowa 2002)
Hansen v. Anderson, Wilmarth & Van Der Maaten, 630 N.W.2d 818 (Iowa 2001)

4.3. Public policy supports making adjacent property owners responsible for sidewalk defects.

State v. Henderson, 804 N.W.2d 723 (Iowa 2011)
Madden v. City of Iowa City, 848 N.W.2d 40 (Iowa 2014)
Pietz v. City of Oskaloosa, 92 N.W.2d 577 (Iowa 1958)
Roney v. City of Des Moines, 130 N.W. 396 (Iowa 1911)
Iowa Code § 670.4(*c*)

4.4. Correctly held and based on good policy, *Madden* should remain authoritative.

Madden v. City of Iowa City, 848 N.W.2d 40 (Iowa 2014)
State v. Iowa Dist. Ct. for Jones Cnty., 902 N.W.2d 811 (Iowa 2017)
Iowa Code § 364.12(2)(*c*)
Fulps v. City of Urbandale, 956 N.W.2d 469 (Iowa 2021)

1. ROUTING STATEMENT

This case should be transferred to the Iowa Court of Appeals as it involves application of existing law. Iowa R. App. P. 6.1101(3)(a). The outcome of this case can be determined by applying existing Iowa Supreme Court case law, specifically *Madden v. City of Iowa City*, 848 N.W.2d 40 (Iowa 2014).

Bankers Trust's arguments for retention by the Supreme Court are mistaken. There is no conflict between appellate rulings. Bankers Trust cites Iowa Rule of Appellate Procedure 6.1101(2)(b) as a basis for retention which addresses instances "in which there appears to be a conflict between a published decision of the court of appeals or supreme court." There is no such conflict. The district court followed the existing precedent of the *Madden* case, and no decision of either court conflicts with *Madden*.

Madden does not conflict with *Peffers v. City of Des Moines*. 299 N.W.2d 675 (Iowa 1980). Initially, it is not clear that there could be a conflict with *Peffers* given that its holding was abrogated by statute. *Fritz v. Parkison*, 397 N.W.2d 714, 717 n.1 (Iowa 1986) (recognizing *Peffers* as abrogated by changes to Iowa

Code § 364.12(2)(*b*)). Factually, *Peffers* is distinguishable because it involved a statute which made no reference to liability. The Iowa Supreme Court held that because the version of section 364.12(2)(*b*) in effect then did not address liability, liability had not been imposed on adjacent property owners. The ordinances at issue in *Madden* and in this case both specifically address liability. So, *Peffers* is factually distinct and not in conflict with *Madden*.

As there is no conflict of existing cases and this case should be resolved by application of existing precedent, transfer to the Court of Appeals is warranted.

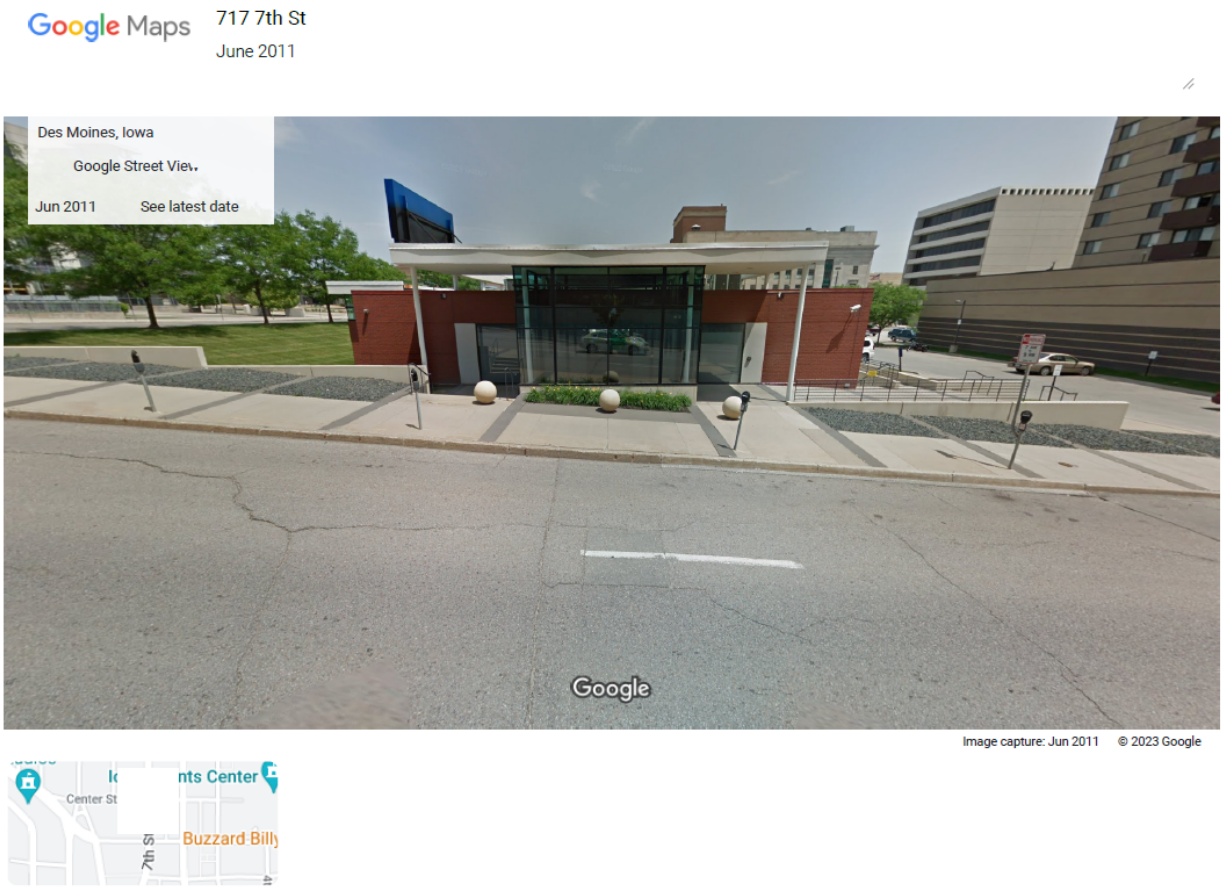
2. STATEMENT OF THE CASE

The City does not disagree with Bankers Trust's statement of the case and agrees that Bankers Trust is the real party in interest for this appeal.

3. STATEMENT OF FACTS

The City agrees with the facts set forth by Bankers Trust. The City presents the following additional facts to supplement those already presented by Bankers Trust.

The sidewalk in front of Bankers Trust had two types of sidewalk including small sections that matched the bank's landscaping. (Streetview Image App. 114.)



After her fall, Ms. Splittgerber obtained a picture of the location of her fall. (App. 115.)

Bankers Trust made payment to Ms. Splittgerber and her husband to settle their claims. (Release App. 116.)

4. ARGUMENT

The Court should affirm the holding that Bankers Trust was required by statute to indemnify the City of Des Moines for any damages Ms. Splittgerber suffered. The *Madden* decision supports this outcome because it correctly applied existing law and is supported by good public policy. The City of Des Moines's ordinance also effectively imposed liability on adjacent property owners.

4.0.1. Issue Preservation

Bankers Trust preserved the issues it raises for review.

4.0.2. Standard of Review

Summary judgment rulings are reviewed for correction of errors at law. *Slaughter v. Des Moines Univ. Col. Of Osteopathic Med.*, 925 N.W.2d 793, 800 (Iowa 2019).

4.1. Des Moines has the authority to impose liability on adjacent property owners for failure to maintain sidewalks.

Both the Iowa Constitution and the Iowa Code give the City of Des Moines authority to take action related to sidewalks. It is this combined authority that gives Iowa cities the ability to require adjacent property owners to maintain sidewalks and impose liability on those property owners for failure to meet that duty. The Iowa Supreme Court correctly found in *Madden v. City of Iowa City* that cities could take such action, 848 N.W.2d 40, 50 (Iowa 2014), and that both home rule and statute support that conclusion.

To begin, municipal home rule authority gives cities the authority to take any action not prohibited by the Legislature.

> Municipal corporations are granted home rule power and authority, not inconsistent with the laws of the general assembly, to determine their local affairs and government, except that they shall not have power to levy any tax unless expressly authorized by the general assembly.
> The rule or proposition of law that a municipal corporation possesses and can exercise only those powers granted in express words is not a part of the law of this state.

Iowa Const. art. III, § 38A. The purpose of the home rule amendment is to give local governments the power to legislate their local affairs. *Hensler v. City of Davenport*, 790 N.W.2d 569,

584 (Iowa 2010). This gives cities broad authority to enact laws governing their affairs including city sidewalks. Consequently, cities have the authority to make adjacent property owners liable for failure to maintain sidewalks unless prohibited by state law. No such law exists as will be discussed later. Des Moines has inherent authority under home rule to enact its ordinance imposing liability on adjacent property owners.

Iowa Code section 364.12 strengthens city authority to impose liability on adjacent property owners. Iowa Code chapter 364 describes many of the powers and duties held by Iowa cities. Section 364.12 describes the "Responsibility for public places." Generally, it places the burden for maintenance on cities:

> A city shall keep all public grounds, streets, sidewalks, alleys, bridges, culverts, overpasses, underpasses, grade crossing separations and approaches, public ways, squares, and commons open, in repair, and free from nuisance.

Iowa Code § 364.12(2). The Code then sets out exceptions. For example, abutting property owners are responsible for the removal of snow and ice from sidewalks and may be liable for damages if they fail to do so. Iowa Code § 364.12(2)(*b*). Importantly for this

case, cities can require abutting property owners to maintain certain city owned land:

> The abutting property owner may be required by ordinance to maintain all property outside the lot and property lines and inside the curb lines upon the public streets, except that the property owner shall not be required to remove diseased trees or dead wood on the publicly owned property or right-of-way.

Iowa Code § 364.12(2)(*c*). With the exception of diseased trees and dead wood, the Iowa Code authorizes cities to require abutting property owners to maintain city owned land between the curb and the edge of the property owner's land.

Together, home rule authority and Iowa Code section 364.12(2)(*c*) give cities the most possible authority to enact ordinances that impose liability for sidewalk defects on adjacent property owners.

The Iowa Code does not preempt imposition of liability on adjacent property owners. The Supreme Court analyzed preemption in the *Madden* opinion, and correctly concluded that preemption did not occur. The dissent in *Madden* concluded that the city's ordinance creating the indemnification right was impliedly preempted because it was in conflict with section

364.12(2). *Madden v. City of Iowa City*, 848 N.W.2d 40, 54-58 (Iowa 2014) (dissenting opinion). The legal standard for this type of preemption

> is demanding. In order to qualify for this branch of implied preemption, a local law must be "irreconcilable" with state law. Further, our cases teach that, if possible, we are to interpret the state law in such a manner as to render it harmonious with the ordinance. In applying implied preemption analysis, we presume that the municipal ordinance is valid. The cumulative result of these principles is that for implied preemption to occur based on conflict with state law, the conflict must be obvious, unavoidable, and not a matter of reasonable debate.

City of Davenport v. Seymour, 755 N.W.2d 533, 539 (Iowa 2008) (cleaned up). The majority opinion in *Madden* followed this guidance. It interpreted the municipal ordinance and Iowa Code section 364.12 in a way that they could coexist rather than interpreting them to find a conflict. Since interpretation of 364.12 to avoid the conflict was possible, it was appropriate for the Iowa Supreme Court to adopt that interpretation.

This demanding standard for implied conflict preemption gives recognition to the fact that Iowa cities have home rule authority and are not limited from acting unless prohibited from doing so by the Legislature. Interpretation of the Iowa Code to

avoid preemption respects the constitutional home rule authority of Iowa cities.

The dissenting opinion in *Madden* was incorrect to find preemption. The dissenting opinion concluded that cities were preempted from imposing liability for sidewalk defects on adjacent property owners because the statute only allowed this when cities served notice before imposing liability. *Madden v. City of Iowa City*, 848 N.W.2d 40, 55-56 (Iowa 2014) (Mansfield, J., dissenting). The dissent reasoned that because the statute addressed sidewalks in subsections (*b*) and (*d*), subsection (*c*) must not apply to sidewalks. *Id.*

The *Madden* dissent's rationale would limit the language of subsection (*c*) without justification. That subsection provides that "The abutting property owner may be required by ordinance to maintain **all property** outside the lot and property lines and inside the curb lines upon the public streets." Iowa Code § 364.12(2)(*c*) (emphasis added). Typically, sidewalks are part of the property between the property line and the curb line of a city street. So, sidewalks are included in the scope of subsection (*c*). The dissent's

reasoning would take sidewalks out of subsection (*c*) without a textual basis. This shows that the reasoning of the majority is correct.

The dissent's rationale also overlooks home rule authority. It suggests that because the statute addresses sidewalks in some sections, cities have no other way to address sidewalks. However, cities have authority to regulate sidewalks as they see fit unless barred by Legislative action. Since section 364.12(2) does not prohibit imposition of liability for sidewalk defects on adjacent property owners, that option is available to cities.

All of these reasons show that the outcome of the *Madden* case was correct, and that cities have authority to impose liability for sidewalk defects on adjacent property owners. Both home rule authority and the Iowa Code provide cities with this authority.

4.2. Des Moines ordinances impose liability on adjacent property owners.

The City of Des Moines has taken action to impose liability for poorly maintained sidewalks on adjacent property owners.

Des Moines has passed ordinances that require abutting property owners to maintain the area between their property lines and the street curb. The Des Moines Municipal Code defines border area: "*Border area* means all property between the lot lines or property lines and the curblines upon the public streets or travelled street surfaces, if no curbing is constructed." City of Des Moines Municipal Code ("Municipal Code") § 102-1. This definition is very similar to the "all property outside the lot and property lines and inside the curb lines upon the public streets" from Iowa Code section 364.12(2)(*c*).

The Des Moines Municipal Code makes abutting property owners responsible for maintenance of the border area:

> (a) The abutting property owner shall maintain the border area in a well-kept and safe condition free from defects, garbage, junk, rubbish, debris, solid waste, nuisances, obstructions or any other hazards, except as permitted in section 98-54 or 98-58 of this Code; provided, however the property owner shall not be required to remove diseased trees or dead or fallen tree limbs.

> …
> (d) The abutting property owner may be liable for damages caused by failure to maintain the border area.

Municipal Code § 102-2.[2]

The City of Des Moines's language is similar to the sidewalk language in *Madden* that the Supreme Court found imposed liability. This is no surprise because it is also similar to the Iowa Code language that imposes liability for failure to remove snow from sidewalks. Iowa Code section 364.12(2)(*b*) requires adjacent property owners to remove snow and ice from sidewalks. If they do not, they "may be liable for damages caused by the failure of the abutting property owner to use reasonable care in the removal of the snow or ice." Iowa Code § 364.12(2)(*b*). The Iowa code uses "may" language to impose liability, and Iowa's cities have followed.

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[2] This Municipal Code language has not changed substantively since at least 2002. Section 102-2 was amended in 2017 and 2019, but neither amendment changed the relevant substance. Prior to 2017, subsections a and d and been subsections a and b. City Ordinance 15,588 added new subsections b and c, but did not change the language that had previously existed. The new subsections b and c are not material to this case. The 2019 amendment made by City Ordinance 15,775 made changes to subsections b and c but made no changes to subsections a and d.

It was promptly apparent to the Iowa Supreme Court that the "may" language in section 364.12(2)(*b*) imposed liability on adjacent landowners. In 1980, the Court found that the version of section 364.12(2) then in existence did not impose liability on adjacent property owners for failing to keep sidewalks clear of snow and ice. *Peffers v. City of Des Moines*, 299 N.W.2d 675, 677-78 (Iowa 1980). The Legislature then amended the statute to include the "may" result in liability language. The Iowa Supreme Court recognized that the new statute had superseded *Peffers* and that the "may" language imposed liability on adjacent property owners. *Fritz v. Parkison*, 397 N.W.2d 714, 717 n.1 (Iowa 1986).

Likewise, the majority opinion found that the "may" language of Iowa City's ordinance created liability for the adjacent property owner. *Madden*, 848 N.W.2d at 48-49. The dissent was based solely on preemption; it did not disagree that the Iowa City ordinance substantively imposed liability.

The mandatory language suggested by Bankers Trust would go too far. Bankers Trust argues that the "may" language of the City's ordinance is not effective to actually impose liability

because it does not give adjacent property owners certainty as to when they would or would not be subject to liability. The alternative, a statute or ordinance that said adjacent property owners "will" always be liable when a sidewalk defect or accumulation of snow or ice causes injury would impose too much liability. Adjacent property owners should not be liable for injuries in border areas when the injury results from actual negligent action by a city. If a city created a hazard or sidewalk defect in the border area, it would be unreasonable to make adjacent property owners liable for the city's conduct. There are instances where an injury would arise out of a border area that an adjacent property owner should not be liable, so the "may" language is appropriate.

This scope of liability is consistent with, though not necessarily bound by, contractual indemnification principles. Bankers Trust argues that the language of the City's ordinance is insufficient to give rise to indemnity because it is not sufficiently express as required by Iowa case law. (Appellant Proof Brief p.16.) Initially, it is notable that the principles Bankers Trust cites are not applicable. The *McNally* case it cites dealt with contractual

indemnification where one party sought indemnification for its own negligence, and the Supreme Court concluded that under those circumstances an indemnification provision must be very specific. *McNally & Nimergood v. Neumann-Kiewit Const., Inc.*, 648 N.W.2d 564, 571 (Iowa 2002). That holding is inapplicable because the City is exercising statutory indemnification rather than common law contractual indemnification.

Hansen v. Anderson, Wilmarth & Van Der Maaten provides a helpful overview of indemnity law. 630 N.W.2d 818 (Iowa 2001). "Iowa recognizes both statutory and common-law indemnity rights. Statutory indemnification is that which is permitted under the Iowa Code." *Id* at 823. *Hansen* goes on to discuss that common law indemnity can arise from contract or by law on the four specific grounds. *Id.* Bankers Trust overlooks that this case involves statutory indemnity while *McNally* dealt with common law contractual indemnity. As such, the demanding standard discussed in *McNally* is not applicable.

Though not applicable, the *McNally* case suggests why the mandatory indemnification language pushed by Bankers Trust is

not warranted. An ordinance with mandatory indemnification in all cases would be similar to the indemnification for a party's own negligence the Court dealt with in *McNally*. Such language might need to meet a demanding standard similar to what is discussed in *McNally*. Using the "may" language and leaving injuries caused by a city's own negligence to be the responsibility of the city appropriately allocates the burdens between cities and adjacent property owners.

The City of Des Moines ordinance imposes liability on adjacent property owners for failure to maintain the sidewalks. The Supreme Court has recognized since the 1980s that similar language imposes liability just as it recognized in *Madden.*

4.3. Public policy supports making adjacent property owners responsible for sidewalk defects.

In interpreting a statute and assessing legislative intent, the court can also examine whether the interpretation promotes a public policy beneficial for the state of Iowa. *State v. Henderson*, 804 N.W.2d 723, 727-28 (Iowa 2011). The holding in *Madden* promotes good public policy because it places responsibility for investigating and maintaining sidewalks on adjacent property

owners who are in the best position to monitor the condition of sidewalks. The City has approximately 970 miles of sidewalks. Making regular inspections of every section of sidewalk in the City would be very challenging. As such, it would be difficult for the City to identify every defect in its sidewalks.

Adjacent property owners are in a different position. People who own property adjacent to City sidewalks are in the best position to monitor those sidewalks because they are the people most likely to travel on those sidewalks on a regular basis. Adjacent property owners are the people most likely to identify a potentially dangerous sidewalk condition before it causes an injury. The Iowa Code, the City ordinance, and the *Madden* holding put the responsibility for monitoring and maintaining the sidewalks on the party in the best position to identify and remedy dangerous conditions. This is good public policy. Involving property owners in the process of keeping sidewalks safe promotes public safety overall and fills a potential gap in the resources of municipalities.

A converse outcome could have a detrimental effect on public services. If *Madden* were reversed and cities were made solely responsible for all injuries on City sidewalks, it could discourage municipalities from providing such public improvements. Understanding that monitoring the condition and making repairs to such improvements is a costly undertaking and the consequences of failing to do so could result in significant liabilities, municipalities might decide the improvements are not feasible and not build as many sidewalks and other public improvements. Discouraging municipalities from building sidewalks and enhancing the lives of Iowans with other public improvements would be detrimental to public life in Iowa, and a legal doctrine that could lead to such an outcome should be avoided if possible. In restricting potential liability for municipalities, the Court's decision in *Madden* encourages municipalities to continue providing public improvements for Iowa residents.

The decision in *Madden* is consistent with other Iowa case law limiting the liability of municipalities unless they have actual

knowledge of a defective condition. In *Pietz v. City of Oskaloosa*, the Iowa Supreme Court held that a city was not liable for damage caused by its trees unless it had actual knowledge of a dangerous condition or the dangerous condition had "existed for a sufficient time to enable the city to discover and repair the same, in the exercise of reasonable and ordinary care and diligence." 92 N.W.2d 577, 579 (Iowa 1958). Similarly, the Iowa Supreme Court has held that municipal liability for sidewalk defects requires actual or constructive notice of the defect. *Roney v. City of Des Moines*, 130 N.W. 396, 398 (Iowa 1911). *Pietz*, *Roney*, and *Madden* represent a recognition that municipalities cannot be everywhere at once and generally do not have the resources to inspect all city owned property often enough to ensure it is free from all potentially dangerous conditions. As such, municipalities generally receive some protection from liability for property owned in large quantities that cannot be guaranteed safe. In this way, the decision in *Madden* is consistent with prior case law.

The policy set by *Madden* is workable. While Bankers Trust argues that the *Madden* decision is "unworkable," it doesn't

explain how. The parties were able to understand and apply the *Madden* holding to the facts of this case. The district court was able to as well. Bankers Trust implicitly acknowledged that it having liability was the appropriate outcome when it paid to settle the case with Ms. Splittgerber. (Release App. 116.) The only unworkability is that Bankers Trust dislikes the outcome.

This is not the right case to determine the contours of comparative fault in the context of a sidewalk defect liability ordinance. Bankers Trust raises the question of how comparative fault under chapter 668 applies when a city imposes liability for sidewalk defects on adjacent property owners. While that may be an issue that needs to be addressed at some time, this is not the right case because there is no record showing the City of Des Moines was negligent. There is no evidence the City of Des Moines took affirmative action that caused a defect or acted in a negligent way. The only negligent action Bankers Trust points to is that it is allegedly negligent to have a complaint based sidewalk inspection program rather than a proactive one. This is not negligent because in addition to responding to complaints the City anticipates that

adjacent property owners will regularly inspect sidewalks and ensure they are safe as they are required to do by ordinance. This is also a discretionary act, whether to have a proactive or complaint based inspection program, so the City is entitled to immunity for the lack of a proactive program pursuant to Iowa Code section 670.4(*c*). The City has both its complaint based program and the knowledge that adjacent owners are obligated to keep sidewalks in good repair. As adjacent owners have a duty to maintain the sidewalks, there is no basis for finding negligence in not going out to inspect sidewalks others have a duty to maintain.[3]

[3] It is also questionable whether the City would have primary responsibility for the defect that led to Ms. Splittgerber's injury. While the common law generally did not impose liability on adjacent property owners, there were exceptions. One was that "liability could also be imposed if the sidewalk in question was constructed in a special manner for the benefit of the abutting landowner." *Madden*, 848 N.W.2d at 44. In this case, Ms. Splittgerber's fall happened at the darker sidewalk panels that matched Bankers Trust's landscaping. Given that the sidewalk appears to have been constructed for the special purpose of matching Bankers Trust's landscaping, Bankers Trust would have liability for Ms. Splittgerber's injuries even if the City's ordinance did not impose a duty to maintain the sidewalk.

4.4. Correctly held and based on good policy, *Madden* should remain authoritative.

There is no reason for this Court to overturn the *Madden* case. As discussed in previous sections, *Madden* was correctly decided, comported with municipal home rule authority, was authorized by the Iowa Code, and promotes good public policy. For all of these reasons, *Madden* should be preserved.

Additionally, since 2014 when it was decided, *Madden* has not been subject to significant criticism. When interpreting a statute and legislative intent, one factor to be considered is the action of the Legislature.

> Under the doctrine of legislative acquiescence, we presume the legislature is aware of our cases that interpret its statutes. When many years pass following such a case without a legislative response, we assume the legislature has acquiesced in our interpretation.

State v. Iowa Dist. Ct. for Jones Cnty., 902 N.W.2d 811, 818 (Iowa 2017) (cleaned up). The Iowa Legislature has not changed Iowa Code section 364.12(2)(*c*) since the *Madden* decision. The Legislature has had eight sessions to indicate *Madden* applied the statute incorrectly, and it has not done so. This is an indication that *Madden* was correctly decided and that there is no basis for

overturning it. Unlike when the Legislature promptly changed the *Peffers* result, no such action has taken place regarding *Madden*.

Madden has also not been reconsidered by the Iowa Supreme Court. The Iowa Supreme Court dealt with another sidewalk case and discussed *Madden* in *Fulps v. City of Urbandale*. 956 N.W.2d 469, 472-73 (Iowa 2021). The *Fulps* decision discusses *Madden* at some length, quotes several paragraphs, and notes the ultimate holding that the ordinance at issue gives the city a right of indemnification against an adjacent property owner. *Id.* The *Fulps* decision does not criticize *Madden* or suggest that its rationale was incorrect. The Court also noted that its decision on an issue related to the public duty doctrine was supported by the existence of an indemnification right and cited to *Madden*.[4] *Id.* at 476.

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[4] There is one other consideration. As we put it in *Johnson*, "Cities, counties, and the state have to balance numerous competing public priorities, all of which may be important to the general health, safety, and welfare." 913 N.W.2d at 266–67. This rationale, rooted in "the limited resources of governmental entities," has little applicability when the government has the ability to obtain indemnification. *Johnson*, 913 N.W.2d at 266; *see Madden*, 848 N.W.2d at 50. *Fulps v. City of Urbandale*, 956 N.W.2d 469, 476 (Iowa 2021), as amended (Apr. 6, 2021).

5. CONCLUSION

This Court should affirm the district court ruling because overruling *Madden* is not warranted. Bankers Trust seeks to reverse precedent because it results in an unfavorable outcome for Bankers Trust, but the law does not support that reversal. As *Madden* was correctly decided and supported by good public policy, the Court should leave it be and affirm the district court.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

The City requests time for oral argument if argument is granted to Bankers Trust.

Respectfully submitted,

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CERTIFICATES

Compliance with Type-Volume Limitation, Typeface Requirements and Type-Styles Requirements.

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 4,587 words.

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirement for Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Word 2016 in Century 14 point font.

Costs. The cost of reproducing this Brief was $ _not applicable_.

Filing. On June 12, 2023, this Brief was filed with the Clerk of the Iowa Supreme Court by filing it on the Appellate Court EDMS system, and a copy of the same was sent to Appellant's attorney via EDMS.

/s/ *Luke DeSmet*
Luke DeSmet