

STATE OF INDIANA)
)SS:
COUNTY OF MARION)

IN THE MARION COUNTY SUPERIOR COURT
CIVIL DIVISION
CAUSE NO: 49D10 09 09 PL 0 4 3 4 3 1

DAVID REDMOND, SR., WILLIAM)
DEARDORFF, DAVID EICHELMAN,)
JERRY GEBHART, TOM GUTHRIE,)
JOHN HASH, SCOTT McCARTY,)
DAVID McPEAK, JOHN SHERRILL,)
WILLIAM SMITH, JOSEPH TIEMEYER,)
BRIAN TODD, RAYMOND TRUMBLE,)
and other unnamed members,)

Plaintiffs,)

vs.)

STATE OF INDIANA, INDIANA)
DEPARTMENT OF HOMELAND)
SECURITY, JOHNSON COUNTY)
EMERGENCY MANAGEMENT,)
HENSLEY TOWNSHIP, HENSLEY FIRE)
PROTECTION DISTRICT BOARD,)
TRAFALGAR FIRE DEPARMENT and)
CHIEF TOM THARPE in his)
individual capacity,)

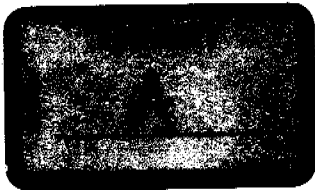
Defendants.)

FILED
(202) SEP 21 2009
Elizabeth A. White
CLERK OF THE MARION CIRCUIT COURT

COMPLAINT FOR WAGES
AND DAMAGES

The Plaintiffs, by counsel, Thomas E. Hastings, and for their cause of action against the Defendants, allege and state as follows:

1. That at all relevant times herein, Plaintiffs, David Redmond, Sr., William Deardorff, David Eichelman, Jerry Gebhart, Tom Guthrie, John Hash, Scott McCarty, David McPeak, John Sherrill, William Smith, Joseph Tiemeyer Brian Todd and Raymond Trumble



(hereinafter referred to as "Plaintiffs"), were firefighters and residents of various counties in Indiana, including Marion, Johnson, Hancock, Hamilton and Jackson County, Indiana.

2. That at all relevant times herein, Defendants, State of Indiana and the Indiana Department of Homeland Security, are located in Marion County, Indiana.

3. That at all relevant times herein, Defendants, Johnson County Emergency Management and Hensley Township were political subdivisions located in Johnson County, Indiana.

4. That at all relevant times herein, Defendant, Hensley Fire Protection Board was a municipal corporation located in Johnson County, Indiana. *See* IC 36-8-11-6.

5. That at all relevant times herein, Defendant, Trafalgar Fire Department, was located in Johnson County, Indiana.

6. That at all relevant times herein, Defendant, Chief Tom Tharpe of the Trafalgar Fire Department, was a resident in Johnson County, Indiana.

7. That on or about June 8, 2008, the Lamb Lake Upper Dam, located in Johnson County, Indiana collapsed and released 50 feet of Lamb Lake's water in less than an hour.

8. That the collapse caused extensive damages and led to significant debris limiting access to and around several roads and streets near Trafalgar in Johnson County, Indiana.

9. That as a result of the collapse and the pending emergency, critical and necessary services were severely limited, including but not limited to standby fire protection and prevention services.

10. That as a result of the flooding, on June 9, 2008, the President of the United States declared 29 counties including Johnson County were in a "State of Emergency."

11. That Governor Mitch Daniels declared 23 counties including Johnson County were in a "State of Emergency."

12. That the Governor's and the President's declarations of a "State of Emergency" made public and individual Federal and State Emergency Management Resources available.

13. That as result of the limited services, Chief Tom Tharpe of the Trafalgar Fire Department enlisted the Plaintiffs to provide standby fire protection and prevention services to areas around Lamb Lake.

14. That Chief Tom Tharpe offered each Plaintiff a wage of \$30.00 per hour to provide these critical and necessary services.

15. That from early June through August 2008, the Plaintiffs provided services for the Defendants and have not been paid.

16. That as of the date of this Complaint, the named Plaintiffs provided a total of 2851 hours of service to the Defendants and there are other potential claimants who provided hours of service and are unpaid.

17. That on August 31, 2009, counsel for the Plaintiffs, Thomas E. Hastings, sent a demand for wages to the named Defendants, and have not heard from any of the Defendants, except Johnson County Emergency Management Office Coordinator, Forrest ("Tug") Sutton and William Barrett, attorney for Johnson County Commissioners.

18. That Indiana Code ("IC") § 22-2-5-2 provides for liquidated damages, costs, and reasonable attorney fees for any unpaid wages.

19. That the Plaintiffs were firefighters and qualified individually as "emergency management workers" pursuant to IC § 10-14-3-3.

20. That the purpose of Indiana's Homeland Security established under IC § 10-14 et. seq. was that "because of the existing and increasing possibility of disasters or emergencies of unprecedented size and destructiveness that may result from manmade or natural causes, to ensure that Indiana will be prepared to deal with disasters or emergencies . . . to protect the public peace, health, and safety, and to preserve life and property in the state, it is found to be declared necessary: . . . (2) to create local emergency management departments and to authorize and direct disaster and emergency functions in political subdivisions of the state; . . . (4) to provide for the rendering of mutual aid among the political subdivisions of the state, . . ." IC § 10-14-3-7.

20. That the purpose of Indiana Homeland Security was also to coordinate all emergency management functions of the state between the federal, state, and local governments, others states and localities, and private agencies and to, "authorize and provide cooperation [and coordination] between departments of government in: (A) disaster prevention; (B) preparedness; (C) response; and (D) recovery." *Id.*

21. That emergency management workers are to be reimbursed for their services. IC § 10-14-3-10.7.

22. That emergency management workers and employees of political subdivisions whom render aid outside their political subdivision "have the same: (1) powers; (2) rights; (3) duties; (4) privileges; and (5) immunities; as if they were performing their duties in the political subdivisions in which they are normally employed."

23. That the purpose of organizing and modernizing local government was to "grant broad powers to enable political subdivisions to operate more efficiently by eliminating restrictions under existing law that (A) impede the economy of operation of . . . political

subdivision . . . and to enhance the ability of political subdivisions to provide critical and necessary services." IC § 36-1.5.1-5.

24. The Plaintiffs, Indiana fire fighters, provided emergency fire prevention and protection services to a municipality in an emergency situation and have not been paid for their services nor received any communication from the Defendants explaining why they have not yet been paid or indicating when the Defendants would pay the Plaintiffs.

25. That the Defendants acted under the color of State authority to hire and offer the firefighters wages and entice their services all without providing any remuneration.

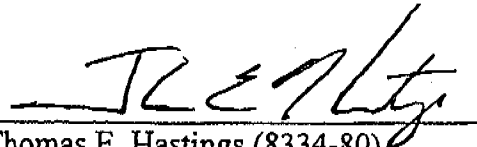
26. That it has been over a year and not one Plaintiff has been paid for any hour of service.

27. That the Plaintiffs have recently been informed that the Trafalgar Fire Department through Johnson County Emergency Management through the Indiana Department of Homeland Security have been unable to secure Federal Emergency Management Funds to reimburse the firefighters for their services.

28. That at no time did any of the Defendants inform the Plaintiffs that their wages were dependent on Federal reimbursement.

29. That the Fire Chief, the Trafalgar Fire Department, the Hensley Fire District Board, Hensley Township, Johnson County Emergency Management, Indiana Department of Homeland Security and the State of Indiana, received emergency services and have failed to pay necessary wages.

WHEREFORE, Plaintiffs, by counsel, Thomas E. Hastings, requests the Court to certify this case as a class action on behalf of all fire fighters who provided emergency fire prevention and protection services for the Defendants, request the Court to enter judgment for the Plaintiffs and against the Defendants in an amount to be determined by the trier of fact at the trial of this cause, plus costs, fees, and liquidated damages provided by law and for all other relief just and proper in the premises.



Thomas E. Hastings (8334-80)
THE HASTINGS LAW FIRM
323 North Delaware Street
Indianapolis, IN 46204
(317) 686-1000