

STATE OF INDIANA ) IN THE MARION COUNTY SUPERIOR COURT  
 ) SS:  
 COUNTY OF MARION ) CAUSE NO: 49D02-1108-PL-032276

ANGELA FISCHER, on behalf of herself and all )  
 other similarly situated, )

Plaintiff, )

v. )

THE STATE OF INDIANA, )  
 THE INDIANA STATE FAIR COMMISSION, )  
 MID-AMERICA SOUND CORPORATION, )  
 JAMES THOMAS ENGINEERING, INC., )  
 THE INDIANA STATE POLICE DEPARTMENT, )  
 THE INDIANA DEPARTMENT OF )  
 HOMELAND SECURITY, )  
 LUCAS ENTERTAINMENT GROUP, LLC, )  
 DAVE LUCAS ENTERTAINMENT GROUP, )  
 LLC, )  
 LIVE NATION WORLDWIDE, INC., AND )  
 LIVE NATION TOURING (USA), INC. )

Defendants. )

**FILED**  
 AUG 29 2011  
 Elizabeth A. White  
 CLERK OF THE MARION CIRCUIT COURT  
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**STATE DEFENDANTS'**  
**MOTION TO DISMISS PLAINTIFF'S COMPLAINT**

The State of Indiana<sup>1</sup>, the Indiana State Fair Commission, the Indiana State Police Department, and the Indiana Department of Homeland Security (herein State Defendants), by counsel, submit their Motion to Dismiss in this cause and respectfully request this Court to dismiss Plaintiff's Complaint for the reason that Plaintiff has failed to comply with the Indiana Code, I.C. 34-13-3-1 *et seq.*, commonly referred to as the Indiana Tort Claims Act.

In support of its motion, State Defendants state as follows:

**I. Wrongful Filing**

1. The State Defendants are entities of the State of Indiana.

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<sup>1</sup> The State of Indiana is not a proper party but that is moot for purposes of this Motion to Dismiss.

2. A claim against the state is barred unless notice is filed with the attorney general or the state agency involved within two hundred seventy (270) days after the loss occurs. Indiana Code 34-13-3-6.

3. Within ninety (90) days of the filing of a claim, the governmental entity shall notify the claimant in writing of its approval or denial of the claim. Indiana Code 34-13-3-11.

4. A person may not initiate a suit against a governmental entity unless the person's claim has been denied in whole or in part. Indiana Code 34-13-3-13.

5. Plaintiff filed her "Tort Claims Notice" on August 22, 2011.

6. Plaintiff also filed her Complaint on August 22, 2011.

7. Plaintiff's claim should be dismissed as it has not been denied in whole or in part.

8. Plaintiff's claim should be dismissed as ninety (90) days have not elapsed since Plaintiff gave notice to State Defendants of her claim.

9. Pursuant to the Indiana Tort Claims Act, the prerequisite requirements to file a Complaint against State Defendants have not been met.

## **II. Failure to Identify Claimant**

1. Notwithstanding the fact that the Plaintiff fully disregarded Indiana Tort Claims Act regarding denial of the claim as a prerequisite to suit under Indiana Code 34-13-3-13 *et seq.*, the Plaintiff also failed to identify the residence of the persons making the claim at the time of the loss.

2. The notice requirement and the form of the statement in the notice must contain the residence of the person making the claim at the time the loss and the time of the filing of the notice. Indiana Code 34-13-3-10.

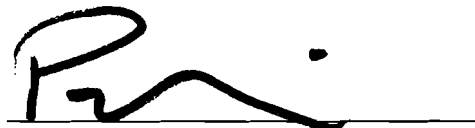
3. The invalid "Tort Claims Notice" attached to the Complaint fails to identify the address of all persons to which the notice purports to pertain to regarding this tragedy.

4. If Plaintiff's "Tort Claims Notice" is allowed it would open the door to virtually unlimited claimants making claims after the statutory allotted time expires; thereby depriving the state government of their statutory obligation to investigate even to confirm the person was actually at the Indiana State Fair at the time of the incident.

WHEREFORE, the State Defendants respectfully pray that the Court dismiss this cause for Plaintiff's failure to comply with the Indiana Code 34-13-3-1 *et seq.* and for all other just and proper relief in the premises.

Respectfully submitted,

LEWIS AND WILKINS LLP



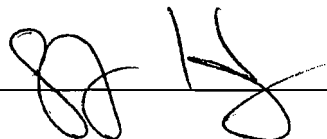
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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing has been duly served upon all counsel of record listed below by U.S. mail, first-class postage prepaid on this 29<sup>th</sup> day of August, 2011:

Irwin B. Levin,  
Gregory L. Laker,  
Richard E. Shevitz,  
Vess A. Miller,  
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