

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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ROBERT R. OLESON,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.  
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ORDER

05-C-33-C

In this action brought under the Federal Tort Claims Act, plaintiff contends that he is suffering lasting injuries from an electrical shock he received when he attempted to use a clothes dryer in his prison unit that had been improperly grounded. At the time of the incident giving rise to this action, plaintiff was an inmate at the Federal Correctional Institution in Oxford, Wisconsin. Currently, he is imprisoned at the United States Penitentiary in Leavenworth, Kansas.

On August 31, 2005, Magistrate Judge Stephen Crocker held a preliminary pretrial conference to set a trial date and establish deadlines for completing discovery, naming witnesses and filing dispositive motions. According to that order, the deadline for dispositive motions is December 9, 2005 and the deadline for completing discovery is March 31, 2006.

Now plaintiff has filed a document titled “Motion for Court Order,” in which he asks the court to order the Bureau of Prisons to provide him with the addresses of inmates Christopher Covey and James Howard and allow him to correspond with A.J. Vargas, a Senior Operations Officer at the Federal Correctional Institution in Oxford. It appears from plaintiff’s complaint that each of these individuals may have been witnesses to the incident at issue in this case. I construe plaintiff’s motion as a motion to compel discovery pursuant to Fed. R. Civ. P. 37. The motion will be denied as premature.

A motion to compel discovery pursuant to Fed. R. Civ. P. 37 is appropriate in a pro se case when a party fails to respond to a question asked by the opposing party under Fed. R. Civ. P. 30, 31 or 33, or when a party fails to produce documents for inspection that have been properly requested under Fed. R. Civ. P. 34. In this case, plaintiff does not say that he served defendant with interrogatories pursuant to Fed. R. Civ. P. 33 concerning the whereabouts of inmates Covey and Howard and that defendant has refused to answer those interrogatories. Until plaintiff makes such a showing with respect to inmates Covey and Howard, it is inappropriate to consider a motion to compel disclosure of the information.

With respect to plaintiff’s request for an order permitting him to correspond with Officer Vargas, plaintiff has made no showing that anyone is preventing him from writing Vargas. Even if he could make such a showing, I would not consider the matter without first allowing defendant to clarify whether Vargas is a witness for the government. If he is, then

plaintiff probably will have to use formal discovery, that is interrogatories, requests for admissions or a deposition, to obtain any information Vargas possesses about the incident. If, however, Vargas is not a witness for the government but rather a potential witness for plaintiff, then defendant could not prohibit plaintiff from communicating directly with Vargas absent a showing to this court of good cause. At this time, however, plaintiff's motion is premature.

#### ORDER

IT IS ORDERED that plaintiff's "Motion for Court Order," construed as a motion pursuant to Fed. R. Civ. P. 37 to compel discovery is DENIED as premature.

Entered this 19th day of September, 2005.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge