

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

PHYLLIS L. HURT,

Plaintiff,

v.

JOHN ASHCROFT, PEGGY A.
LAUTENSCHLAGER and
GROUP HEALTH COOPERATIVE,

Defendants.

OPINION AND
ORDER

04-C-691-C

Plaintiff Phyllis L. Hurt brings this personal injury claim against defendants John Ashcroft, Peggy A. Lautenschlager and Group Health Cooperative under 28 U.S.C. § 2401(b) and 39 C.F.R. § 912.9(a), alleging that a United States Postal Service vehicle collided with her motor vehicle, causing her to experience pain and suffering, incur medical expenses and lose income. Jurisdiction is present. 28 U.S.C. § 1346(b)(1).

Presently before the court is defendants' motion to dismiss defendant Peggy A. Lautenschlager from this action. Fed. R. Civ. P. 12(b). Defendants argue that defendant Lautenschlager has no interest in the action and notes that plaintiff's attorney, Seven H. Gibbs, agrees. According to a letter written by Gibbs to Assistant Attorney General Charles

Hornstra on October 18, 2004, plaintiff is not seeking any relief from defendant Lautenschlager, but served her the complaint because of some “quirky point of law” that requires her to serve the Attorney General of the United States as well as the Attorney General of the State of Wisconsin. Attachment to Dfts.’ Mtn. to Dismiss, dkt. #15.

Fed. R. Civ. P. 4 governs service in federal litigation. Under Rule 4(1)(A) and (B), plaintiff must hand deliver a copy of the complaint and summons to the United States attorney for the district in which the action is brought or his or her designee (or send a copy by registered or certified mail to the civil process clerk at the office of the United States Attorney) *and* send a copy to the Attorney General of the United States at Washington, District of Columbia. See also Tuke v. United States of America, 76 F.3d 155, 156 (7th Cir. 1996) (Rule 4 requires delivery of summons and complaint to both United States Attorney and Attorney General of the United States in Washington, D.C.). Neither party points to any rule or law that requires a plaintiff in a suit against a United States government agency, such as the United States Postal Service, to send a copy of the complaint to a state’s attorney general and I am aware of none. Because there appears to be no requirement that defendant Lautenschlager be a part of plaintiff’s action, I will grant defendants’ motion to dismiss her from the case.

ORDER

The motion of defendants John Ashcroft, Peggy A. Lautenschlager and Group Health Cooperative to dismiss plaintiff Phyllis L. Hurt's complaint against defendant Peggy A. Lautenschlager is GRANTED.

Entered this 18th day of April, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge