FILED

APR 2 2 2013

BRIAN R. MARTINOTTI
J.S.C.

This Order has been prepared and filed by the Court.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

IN RE YAZ®, YASMIN®, OCELLA® LITIGATION

CASE NO. 287
Master Docket No. BER-L-3572-10 MT

CIVIL ACTION

ORDER FOR DISCOVERY

THIS MATTER, having been opened to the Court by Bayer HealthCare Pharmaceuticals Inc. ("Bayer"), pursuant to R. 4:11-1, petitioning this Court to order depositions before the filing of an action; the Court having reviewed Bayer's submissions;

For the reasons set forth in the memorandum decision attached hereto;

IT IS on this 22 day of April, 2013,

ORDERED:

1. Bayer's Verified Petition For Discovery is DENIED.
2. A copy of this Order shall be served upon all counsel of record within five (5) days of receipt and will also be posted to the Judiciary Website.

HON. BRIAN R. MARTINOTTI, J.S.C.

NOT TO BE PUBLISHED WITHOUT

THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

IN RE YAZ®, YASMIN®, OCELLA® LITIGATION

CASE NO. 287
Master Docket No. BER-L-3572-10 MT

CIVIL ACTION

MEMORANDUM DECISION

Submitted: April 18, 2012
Decided: April 22, 2013

MARTINOTTI, J.S.C.

Before this Court is a petition by Bayer HealthCare Pharmaceuticals Inc. ("Bayer"), filed on April 18, 2013, petitioning this Court pursuant to R. 4:11-1 to order depositions of various telecommunications carriers before the filing of any action.

Bayer alleges that unknown persons have been placing "robo-calls" to potential plaintiffs in the ongoing YAZ litigation, inducing them to join in the suit. Bayer wishes to prevent these calls, not to prevent further complaints against them, but instead to prevent the caller's "misleading and harassing tactics." For example, Bayer indicates that recipients of these calls received multiple phone calls per day, falsely claimed to work for Bayer, or falsely claimed to receive medical information from Bayer.

Bayer has ascertained some of the phone numbers from which the calls are being made, and based on the numbers and public records, has identified some of the

telecommunications carriers. Bayer has requested from these companies the customers associated with the telephone numbers, so that Bayer may ascertain the parties responsible for the phone calls.

Rule 4:11-1 allows a potential plaintiff to petition the court, seeking an order for pre-litigation discovery. In re Hall by and Through Hall, 147 N.J. 379, 384-85, 688 A. 81 (1997); Johnson v. Grayce Tighe, Inc., 365 N.J. Super. 237, 240, 839 A.2d 49 (2003). However, this rule "was not intended to authorize pre-suit discovery for the sole purpose of assisting a prospective plaintiff in acquiring facts necessary to frame a complaint," including the discovery of potentially liable defendants. Johnson, supra, 365 N.J. Super. at 240, 839 A.2d 49 (citing In re Hall, supra, 147 N.J. at 391, 688 A. 81). Accord Rule 4:11-1, comment 2 (citing Johnson, supra, 365 N.J. Super. at 240, 839 A.2d 49). Rule 4:11-1 is more appropriately used for the preservation of evidence or where depositions are necessary to comply with the Affidavit of Merit Statute, N.J.S.A. 2A:53a-27 to -29. See In re Hall, supra, 147 N.J. at 393, 688 A. 81 (authorizing courts to grant pre-litigation discovery petitions in malpractices cases to discover facts necessary for an affidavit of merit); Gilleski v. Community Med. Center, 336 N.J. Super. 646, 765 A.2d 1103 (App. Div. 2001) (finding that defendant was not negligent in discarding critical physical evidence, and stating that plaintiff could have filed a petition under R. 4:11-1 for an order to preserve the evidence); Sturm v. Feifer, 186 N.J. Super. 329, 452 A.2d 686 (App. Div. 1982) (allowing pre-litigation depositions in anticipation of a will contest, where potential plaintiffs feared that witnesses to the testator's will would also be deceased at the time of the testator's death).

This Court finds that Bayer's petition is made primarily to identify the parties responsible for the phone calls in order to name those parties as potential defendants in a suit. (See Verified Petition For Discovery, ¶¶ 23-24.) Accordingly, Bayer's petition is DENIED, as it does not fall within the purview of Rule 4:11-1.

The appropriate application by Bayer is to file an order to show cause seeking the information requested in the petition. Bayer shall file a verified complaint and proposed form of order with the order to show cause, setting a return date of May 1, 2013.