IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff, vs. ABRAXIS BIOSCIENCE, INC., Defendant.	§ § § § § § § § § § §	Case No. 06-438-GMS **REDACTED PUBLIC VERSION**

PLAINTIFF ELAN PHARMA INTERNATIONAL LIMITED'S MOTION IN LIMINE NO. 4 TO PRECLUDE TESTIMONY ABOUT AND EVIDENCE OF ABRAXIS'S UNRELIABLE DATA CONCERNING HUMAN ALBUMIN CROSSLINKING

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Dated: March 27, 2008

Plaintiff Elan Pharma International Limited ("Elan") respectfully seeks to preclude Defendant Abraxis BioScience, Inc. ("Abraxis") from arguing or introducing evidence at trial regarding Abraxis's data concerning human albumin crosslinking that was not

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I. Introduction

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[1] One HSA molecule is a monomer. As such, it does not have any intermolecular crosslinkages, *i.e.*, it is not cross-linked. Two HSA molecules bonded to each other are a dimer; three bonded together are a trimer; many bonded together are an oligomer or polymer.

[2] Citations to "Exh. __" refer to the Exhibits attached to the Declaration of Lisa Chiarini submitted with this motion.

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Therefore, pursuant to Federal Rule of Evidence 703, Dr. Amiji should be precluded from referring to this data before the jury.

II. Applicable Principles

Federal Rule of Evidence 703 provides that an expert may base an opinion on facts or data that would otherwise be inadmissible, *only* if the facts and data are of a type reasonably relied upon by experts in the particular field. Fed. R. Evid. 703. "If the data underlying the expert's opinion are so unreliable that no reasonable expert could base an opinion on them, the opinion resting on that data must be excluded." *In re TMI Litigation*, 193 F.3d 613, 697 (3d Cir. 1999) (citations omitted) (affirming exclusion of expert testimony when the data supporting expert's challenged opinion was deemed unreliable); *see also Montgomery County v. Microvote Corp.*, 320 F.3d 440, 448-9 (3d Cir. 2003) (affirming exclusion of expert testimony not based on sound data and noting concern that the expert did not appear to know source of data). Here, the data upon which Dr. Amiji relies to form his opinion that the HSA in Abraxane® is cross-linked must be excluded because it is otherwise inadmissible and wholly unreliable.

III. Argument

A. The

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IV. Conclusion

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A Any probative value they could arguably have in assisting the jury to evaluate the expert's opinion is outweighed by their misleading and prejudicial effect, and these data, as well as any testimony referring to or based on them, should be excluded.

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