IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

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

DECLARATION OF JEFFREY D. SULLIVAN IN SUPPORT OF ELAN PHARMA INTERNATIONAL LIMITED'S OPPOSITION TO ABRAXIS'S MOTION IN LIMINE NO. 2 TO EXCLUDE EVIDENCE OF ELAN'S SSNMR TESTING OF ABRAXANE

I, Jeffrey D. Sullivan, hereby declare as follows under penalty of perjury pursuant to 28 U.S.C. Section 1746:

1. I am an attorney licensed to practice in the State of New York, and I am admitted *pro hac vice* to practice in Cause No. 06-438-GMS; *Elan Pharma International v. Abraxis BioScience, Inc.*; In the United States District Court; District of Delaware ("*Elan v. Abraxis*"). I am a partner with the law firm of Baker Botts L.L.P. and counsel of record for Elan Pharma International Limited. I submit this Declaration in Support of Elan Pharma International Limited's Opposition to Abraxis's Motion In Limine No. 2 To Exclude Evidence Of Elan's SSNMR Testing Of Abraxane. I have personal knowledge of the matters set forth herein, and if called upon to do so, I could and would competently testify thereto.

2. Attached hereto as Exhibit 1 is a true and correct copy of selected portions of the Expert Report of Cory Berkland, Ph.D.

3. Attached hereto as Exhibit 2 is a true and correct copy of selected portions of the deposition transcript of Cory Berkland, Ph.D.

4. Attached hereto as Exhibit 3 is a true and correct copy of selected portions of the Expert Report of Eric J. Munson.

5. Attached hereto as Exhibit 4 is a true and correct copy of selected portions of the deposition transcript of Cory Berkland, Ph.D.

6. Attached hereto as Exhibit 5 is a true and correct copy of selected portions of the deposition transcript of Eric J. Munson.

7. Attached hereto as Exhibit 6 is a true and correct copy of selected portions of the deposition transcript of Dewey Barich.

8. Attached hereto as Exhibit 7 is a true and correct copy of selected portions of the Expert Report of Eric J. Munson.

9. Attached hereto as Exhibit 8 is a true and correct copy of selected portions of the deposition transcripts of Eric J. Munson and Dewey Barich.

10. Attached hereto as Exhibit 9 is a true and correct copy of selected portions of the deposition transcript of Dewey Barich.

11. Attached hereto as Exhibit 10 is a true and correct copy of selected portions of the deposition transcript of Eric J. Munson.

12. Attached hereto as Exhibit 11 is a true and correct copy of selected portions of the deposition transcript of Jerry L. Atwood.

13. Attached hereto as Exhibit 12 is a true and correct copy of selected portions of the deposition transcript of Dewey Barich.

14. Attached hereto as Exhibit 13 is a true and correct copy of selected portions of the deposition transcript of Jeffrey D. Winkler.

15. Attached hereto as Exhibit 14 is a true and correct copy of selected portions of the deposition transcript of Jerry L. Atwood.

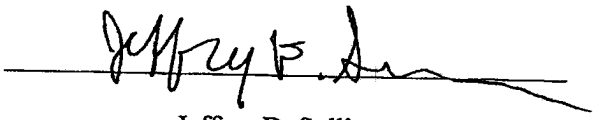
16. Attached hereto as Exhibit 15 is a true and correct copy of selected portions of the deposition transcript of Cory Berkland, Ph.D.

17. Attached hereto as Exhibit 16 is a true and correct copy of selected portions of the deposition transcript of Patrick Soon-Shiong, M.D.

Pursuant to 28 U.S.C. Section 1746, I hereby affirm and declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

FURTHER DECLARANT SAYETH NOT.

Executed this 3rd day of April 2008 in New York, New York.



Jeffrey D. Sullivan

EXHIBIT 1

REDACTED

EXHIBIT 2

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff,	)	
vs.	)	Case No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC., Defendant.	)	

ORAL VIDEOTAPED DEPOSITION
CORY BERKLAND, Ph.D.
DECEMBER 14, 2007

ORAL VIDEOTAPED DEPOSITION OF CORY BERKLAND, Ph.D., produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 14th day of December, 2007, from 9:12 a.m. to 7:36 p.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Baker Botts, 910 Louisiana, 32nd Floor, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

also directed you to produce all notebooks, paper and basically any other data regarding your preparation of the manipulated samples?

A. Yes. I'm aware.

MR. SULLIVAN: Object.

Q. (By Ms. Kruze) Are you aware that the subpoena also included any paper generated by a person working for you like David Shi?

MR. SULLIVAN: Object.

A. Yes. I'm aware of that.

Q. (By Ms. Kruze) Did you produce all your hard-copy notes?

A. Yes, I did.

Q. And did you produce all data relating to any work you conducted?

A. Yes, I did.

Q. Are you aware that you didn't produce a single hard-copy piece of paper about your sample preparation in the case?

A. Yes. I'm aware of that; and I'd like to clarify that, if I may.

So for this particular case I was directly involved with David Shi -- Lianjun Shi. I'll refer to him as David probably throughout most of this deposition. And David and I exchanged

verbally on multiple occasions what was done, how samples were handled, what were the experimental variables that were used.

I then recorded those in what I would consider to be a precursor document to the report. That's something that would end up being modified into the final report. So much in the same way that when you start executing a Word document, when you start writing a letter, it's not common practice for you to include when you've pasted a letterhead into that letter. It's not common practice for you when you write the greeting on that letter to include that document. So what I included was all that information compiled in my expert report.

Q. Did you keep a lab notebook with regards to your sample preparation?

A. No. I did not keep a lab notebook.

Q. Did David Shi keep a lab notebook of his experiments?

A. David Shi did not keep a lab notebook, and I'd like to put that in context. So previously when I was asked questions regarding whether or not it was common practice for my students to keep lab notebooks, I answered in the affirmative; and then I further said that it would be for any procedures that

were not considered to be routine or common in the laboratory.

In addition, in this particular case, rather than writing this down in a lab notebook and then translating it into a report document, we chose to take that information, put it into a document that was refined into the report.

Q. Is it your testimony that preparing manipulated samples of Abraxane is routine in your lab?

MR. SULLIVAN: Object.

A. It is my opinion that working with nanoparticles and separating them is incredibly routine in our laboratory, specifically --

Q. (By Ms. Kruze) So it's your testimony --

A. I'd like to further my answer. So specifically I think you'll see from the years of experience of David Shi, he has worked for nearly a decade in industry. He has a Ph.D. degree. He is a doctor. He has experience in two different postdoctoral positions, and he now works in the pharmaceutical industry. So David Shi is trustworthy to carry out these routine experiments. And based on my knowledge and my expertise, we have also worked with micron-sized particles, nanosized particles,

time that I've asked you that question, actually.

So if you were working on a peer-reviewed article, would you keep a laboratory notebook of your experiments?

MR. SULLIVAN: Object.

A. The question you asked previously, I believe, was is it routine in your laboratory to keep a laboratory notebook. And I addressed that question with some additional information. So I'll try to reiterate that information here as well.

When we generate data that we would like to publish, it is important for us to take the essential data that we would need to reproduce in that document and record it in some way.

As I said before, in this way and this -- on this particular instance instead of recording it into a laboratory notebook, I recorded it into a precursor document for the final report that I submitted. So it's not as if this information was lost at some point along the way and we're relying on recollection or speculation. We're relying on information that was recorded.

Here it was not recorded in the context of a laboratory notebook because we have a particular machine in the laboratory, a centrifuge in the

that.

How many times has David prepared samples of a nanoparticulate drug formulation for NMR testing?

MR. SULLIVAN: Object.

A. To the best of my knowledge, on several occasions David has prepared samples for NMR testing. In addition, he has prepared countless polymers, molecules that were tested by NMR. So in the context of nanoparticles, he has several experiences. In the context of sample preparation for NMR in general, he has a wealth of experience.

Q. (By Ms. Kruze) And how many times have you personally prepared samples of a nanoparticulate drug formulation for NMR testing?

A. To the best of my recollection, I have not prepared samples specifically for NMR testing, although I have prepared samples on countless occasions for similarly sensitive techniques that require careful care of the sample.

Q. Do you consider that the samples that David prepared are correctly called Abraxane?

MR. SULLIVAN: Object.

A. I referred to those in my report as the nanoparticle portion of Abraxane.

size that we used and we have three remaining vials, I think I can say with a -- actually, now that I think about it, I can say with a high level of assurance that we sent two samples that we prepared to Professor Munson.

Q. (By Ms. Kruze) And these two samples were prepared at different times. Is that correct?

A. That's correct. First we prepared the lyophilized sample, and then there was some speculation that the sample may have an increased level of amorphousness as a result of the lyophilization process. So then we prepared the air-dried samples, and just scientifically that's a good thing to do. Anytime you can validate the composition of what you're analyzing using two different methods, that's a scientifically sound approach.

Q. Let's take another break.

A. Okay.

THE VIDEOGRAPHER: We're off the record. The time is 5:41 p.m.

(Recess taken)

THE VIDEOGRAPHER: We're on the record. The time is 5:59 p.m.

Q. (By Ms. Kruze) Just before the break we

were discussing David's preparation of the samples. Did David, when he was finished preparing the samples, transfer them directly to Dewey Barich?

A. Yes. To the best of my knowledge, the samples were transferred directly to Dewey Barich; or I think there was an occasion or occasions where Dewey and Eric Munson both came over together.

Q. How long did the samples sit around before Dewey and/or Eric Munson came to pick them up?

A. For the lyophilized samples the time before pickup was about two days or so. For the air-dried samples they were picked up the next morning. In my report I indicate that they were dried overnight. They were picked up the next morning.

Q. For the lyophilized samples where were the samples kept for those two days before Dewey picked them up?

MR. SULLIVAN: Object.

A. They were -- okay. So when those samples were prepared, they were actually lyophilized in the centrifuge tubes. The centrifuge tubes were then removed from the lyophilizer, capped and placed in the refrigerator.

Q. (By Ms. Kruze) So the samples sat in a refrigerator for two days?

EXHIBIT 3

REDACTED

EXHIBIT 4

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff,	)	
vs.	)	Case No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC., Defendant.	)	

ORAL VIDEOTAPED DEPOSITION
CORY BERKLAND, Ph.D.
DECEMBER 14, 2007

ORAL VIDEOTAPED DEPOSITION OF CORY BERKLAND, Ph.D., produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 14th day of December, 2007, from 9:12 a.m. to 7:36 p.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Baker Botts, 910 Louisiana, 32nd Floor, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

yours, Doctor. Is that correct?

A. May I take a moment to familiarize myself with the document?

Q. Of course.

A. Do you know if this was obtained -- downloaded from the web as a preprint article?

Q. No, sir. It was produced by you in this litigation.

A. Okay.

Q. I don't know if you can see. It's Berkland 0000171 for the record.

A. Okay. So I just want to note that based on the information given at the top of this document, there's no volume and issue number given. So it actually is -- it's what's called the publication on-line. It had not yet appeared in print in the journal.

Q. Okay. And, Dr. Munson, Eric J. Munson, is listed as a coauthor with you. Is that correct?

A. Yes. That's correct.

Q. The aim of this work was to encapsulate nanoparticles of the antibiotic Cipro into larger microspheres. Is that a fair characterization?

A. Yeah. Generally speaking, that's a fair characterization.

related, especially considering the context in which I've used the word "intensive." Perhaps you're referring to the word "intensive" as -- oh, I probably ...

Q. (By Ms. Kruze) I'm sorry. Let me clarify. I wasn't trying to say that intensive means contamination.

A. Okay.

Q. I was just asking you if the process that I outlined above would cause contamination.

MR. SULLIVAN: Object.

A. Again, I can't extrapolate if there would be contamination present or not. And I think that perhaps you're misconstruing the way I've used the word "intensive" here as well. I've tried to make it clear that intensive refers to, you know, the requirement of a large piece of equipment, the addition of milling media, et cetera.

Q. (By Ms. Kruze) Let's go back to your article, which is Exhibit 2. You testified earlier that Dr. Munson ran some experiments to determine the physical characteristics of these nanoparticles. Is that correct?

MR. SULLIVAN: Object.

A. I think I said physical and chemical

characteristics.

Q. (By Ms. Kruze) And did he perform experiments to determine the crystallinity of the nanoCipro that you prepared?

MR. SULLIVAN: Object.

A. This collaboration was done, as I mentioned, with the formulation work and the particle handling being done in our lab and the particle design. And then that portion of the analytical work was handled by Professor Munson's laboratory.

Q. (By Ms. Kruze) Did Dr. Munson conduct solid-state NMR on the particles of nanoCipro that you prepared?

A. His laboratory conducted those experiments.

Q. They were run in his laboratory?

MR. SULLIVAN: Object.

A. To the best of my knowledge, they were run using equipment that is under his control.

Q. (By Ms. Kruze) And were the results of his NMR tests subjected to deconvolution?

MR. SULLIVAN: Object.

A. The first thing I'd like to state is that within the context of this paper, I think I was fairly clear in defining the roles of everyone on this paper. Just to remind you, my role was to come

EXHIBIT 5

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff,	)	
vs.	)	Case No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC., Defendant.	)	

ORAL VIDEOTAPED DEPOSITION

ERIC J. MUNSON, Ph.D.

NOVEMBER 29, 2007

ORAL VIDEOTAPED DEPOSITION OF ERIC J. MUNSON, Ph.D., produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 29th day of November, 2007, from 9:07 a.m. to 7:15 p.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Baker Botts, 910 Louisiana, 32nd Floor, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

although there may be other aspects as well associated with that.

Q. What other aspects?

A. I don't recall specifically what that would be. Certainly I am an expert in many areas and would not try to restrict my limitations at this point.

Q. And did you analyze certain samples by solid-state NMR in connection with this litigation?

A. Could you be a little bit more specific?

Q. In what way?

A. For example, when you talk about you.

Q. So am I correct that Elan hired you to do certain experiments, solid-state NMR analyses of samples; but you didn't personally do them; you had somebody else do them. Is that correct?

MR. SULLIVAN: Objection.

A. Could you be a little bit more specific?

Q. (By Ms. Evans) What do you not understand, Doctor?

A. For example, are you referring to -- Elan hired me for the samples, to run certain samples. Could you be a little more specific as it relates to -- so, for example, with respect to the analysis, Elan asked me to analyze those samples. And in order to do that, I gave those samples to Dr. Dewey Barich

and asked him to run them under my supervision.

Q. Who is Dr. Dewey -- could you spell his name, please, for the record, the person who actually did the experiments?

A. Could you be a little more specific what you mean by "do the experiments"?

Q. Well, you just told me that you gave the samples to Dr. Dewey Barich to run the analyses. That's the person who did the experiments, the hands-on person, right?

MR. SULLIVAN: Objection.

A. Once again, I guess, what are you referring to? Are you talking about Dr. Barich as -- well, could you be a little bit more specific when you talk about running the experiments?

Q. (By Ms. Evans) Well, in your report you set forth certain solid-state NMR data, correct?

A. That is correct.

Q. Who did the experiments to acquire that data?

A. So are you talking about who sat down at the NMR spectrometer and acquired the data?

Q. That would be the person who ran the experiments, yes. That's what I'm referring to, Doctor.

MR. SULLIVAN: Objection. Don't argue with the witness.

A. So the person who ran the experiments and acquired the data is Dr. Dewey Barich.

Q. (By Ms. Evans) Could you spell --

A. His name is D-e-w-e-y, B-a-r-i-c-h.

Q. Why did you ask Dr. Barich to do the experiments for this litigation?

MR. SULLIVAN: Objection.

A. Could you be a little bit more specific? You're asking why I did this?

Q. (By Ms. Evans) That's right. Why didn't you do it yourself?

MR. SULLIVAN: Objection.

Q. (By Ms. Evans) Why didn't you do the experiments yourself, Doctor?

MR. SULLIVAN: Objection. Mischaracterizes.

A. Well, once again, can you be a little bit more specific when you're talking about the question of why I did not run the experiments?

Q. (By Ms. Evans) No, I don't think so, Doctor, because I don't know why you didn't run the experiments yourself. I need you to tell me that.

MR. SULLIVAN: Objection.

Argumentative.

A. So one of the reasons that I asked Dr. Barich to run these particular experiments is the fact that he is eminently qualified to do solid-state NMR spectroscopy, especially as it's related to the analysis of paclitaxel. Dr. Barich has a Ph.D. degree in chemistry.

Q. Has a what?

A. Ph.D. in chemistry.

Q. Uh-huh.

A. He also did a postdoctoral associate at the University of Utah for four years. During the time he was at the University of Utah, he acquired some of the first solid-state NMR spectra of paclitaxel. So he has extensive experience with analyzing paclitaxel using solid-state NMR spectroscopy. He is also a very competent scientist. And those are some of the reasons why I asked Dr. Barich.

Q. So in your opinion Dr. Barich was more qualified to run the studies set forth in your report than you were?

MR. SULLIVAN: Objection. Mischaracterizes.

Q. (By Ms. Evans) Is that your testimony?

A. Once again, I would not agree with that

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED,	)	
Plaintiff,	)	
vs.	)	Case No. 06438GMS
ABRAXIS BIOSCIENCE, INC.,	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF DEWEY H. BARICH, PhD
TAKEN BY DIANA B. KRUZE
ON BEHALF OF THE DEFENDANT
JANUARY 25, 2008
9:15 a.m.

REPORTED BY NAOLA C. VAUGHN
REGISTERED PROFESSIONAL REPORTER
CERTIFIED COURT REPORTER (MO #1052
CERTIFIED REALTIME REPORTER

entire process for whichever ones he might have been present for.

MS. KRUZE: Okay. I know we're probably about to run out of tape; so this is a good time for us to take another break.

THE VIDEOGRAPHER: We're off the record. It's 11:23 a.m. Central Standard Time.

(Recessed from 11:23 a.m. to 11:37 a.m.)

THE VIDEOGRAPHER: We're back on the record. It's 11:37 a.m. Central Standard Time.

Q. BY MS. KRUZE: So before the break, we were talking about Dr. Munson's presence while you were doing these samples.

Did you save all of the data associated with your 34 runs?

A. Yes.

Q. And did you ever print out a hard copy of any of the data?

A. For some of the conference calls that I was asked to attend, I believe that I was -- I believe we had some printouts at at least some of those teleconferences.

Q. Did you ever save over original data?

A. No.

Q. Did you ever rename a file name?

EXHIBIT 7

REDACTED

EXHIBIT 8

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff,	)	
vs.	)	Case No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC., Defendant.	)	

ORAL VIDEOTAPED DEPOSITION

ERIC J. MUNSON, Ph.D.

NOVEMBER 29, 2007

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particular spectrum.

Q. How do you know the conditions under which the spectrum was acquired?

A. Those conditions are recorded in the information that's present in the NMR spectrum and the file associated with it.

Q. What do you mean "the file associated with it"?

A. So when you acquire a free induction decay --

Q. Yes.

A. -- you will save that free induction decay as a file. That file also contains the experimental parameters associated with that particular analysis, and additional information may be found as well within the file name.

Q. So all the experimental parameters of the solid-state NMR experiments should be recorded in these electronic files that you've just described?

A. Could you be a little bit more specific, I guess, when you're talking about ...

Q. Well, would the parameters on how you ran the solid-state NMR analysis, would that be recorded in these electronic files you've identified?

A. If you could be a little bit more specific

as to what parameters.

Q. Residence time, the time that you run the sample.

A. So the total sample time?

Q. All right. Yes.

A. Or the -- I apologize. It should be better characterized as the total experiment time.

Q. All right.

A. Is that what you mean?

Q. Is that recorded?

A. I don't know if it's recorded directly, but it's certainly something that is calculated.

Q. Calculated based on what?

A. In order to calculate that, you use the number of acquisitions times the recycle delay. In theory you should also include the acquisition time and also some other parameters as well. But essentially it comes down to those two main parameters, the number of acquisitions times the recycle delay.

Q. Is the recycle delay recorded in those electronic files you've referenced?

A. Yes, it is.

Q. Is the number of acquisitions recorded in those files you've referenced?

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

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Plaintiff,	)	
vs.	)	Case No. 06438GMS
ABRAXIS BIOSCIENCE, INC.,	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF DEWEY H. BARICH, PhD
TAKEN BY DIANA B. KRUZE
ON BEHALF OF THE DEFENDANT
JANUARY 25, 2008
9:15 a.m.

REPORTED BY NAOLA C. VAUGHN
REGISTERED PROFESSIONAL REPORTER
CERTIFIED COURT REPORTER (MO #1052
CERTIFIED REALTIME REPORTER

academic research activities.

Q. BY MS. KRUZE: So -- but do you consider doing testing for litigation routine?

MR. RIDDLE: Objection, form.

A. The data that we collect is quite routine. It doesn't really matter what the purpose of collecting the data is. It doesn't have any impact on how we do the analysis, on how we operate the instrument. The data ultimately is the data.

Q. BY MS. KRUZE: Okay. So would you consider doing testing for litigation routine then?

MR. RIDDLE: Objection, form. I mean, how many times are you going to ask the same question, Diana?

Q. BY MS. KRUZE: And, again, you can go ahead and answer. I know that's --

A. Well, I believe I already have.

Q. So you would consider testing for litigation routine?

MR. RIDDLE: Objection, form.

A. Well, again, I believe that you've asked that question. I gave an answer. Could we ask the court reporter to read back?

MR. RIDDLE: Do you want Ms. Vaughn to read -- Ms. Vaughn; is that correct? -- to read back your previous answer? We can do that.

been instructed not to answer that question.

Q. BY MS. KRUZE: Were attorneys present at that meeting in January?

A. It was my understanding -- I didn't get introduced to everyone on the other end of the teleconference. It is my understanding that some or all of those people are attorneys.

Q. Do you remember any of the names of the people around that teleconference?

A. I believe one name was Bill. And that's the only name I remember.

Q. Okay. Did you ever have any discussions about your NMR testing outside of the presence of attorneys or what you thought were attorneys?

A. Could you just repeat that one?

Q. Sure. Did you ever have any discussions about your NMR testing without attorneys?

MR. RIDDLE: Objection, form.

A. As part of collecting the data on these samples, I was doing it under the direction of Professor Munson. And so he and I discussed at times what I was -- what the status of that work was. I came to him to find out what parameters he might like to have used for any future analyses.

When you're collecting solid state NMR data,

there are a number of parameters that you must optimize. Some of these are done simply to calibrate the instruments. This is done with a standard compound as opposed to the actual sample that you're going to analyze.

But then each sample has its own properties. You might have to learn what some of those properties are in order to collect data. Even after you've done that, there are still some other choices that can be made. And with the work I do for Professor Munson that I'm doing as part of this service center that he has, where we're working on external samples as opposed to academic research samples, I usually speak with him directly to find out how he wants that work, what parameters he might like to have used.

Q. When Dr. Munson first contacted you about this case, what expertise did he request that you provide?

MR. RIDDLE: Objection, form.

A. I'm not sure that any expertise I have was his motivation. These service center projects that come to him are carried out by different people in his lab. Some of the graduate students perform the experiments on other projects. I happened to be his choice for this one. I don't know why.

Q. BY MS. KRUZE: What was the assignment that he gave you?

A. He told me that there was a project coming up that would be associated with Professor Berkland. And some period of time before I was provided any samples -- he told me this a few days perhaps. And he said that he would let me know that something was coming up, and at some point he said, you know, we're ready to start this work; talk to Professor Berkland about the samples.

Q. Okay. And what work specifically did either Dr. Munson or Dr. Berkland request that you do?

A. Professor Munson asked me to collect routine solid state NMR experiments on the samples that were provided by Professor Berkland.

Q. And what are your qualifications for that work?

A. I've been operating solid state NMR spectrometers for -- I suppose at the time about 13 years. Although the work that we were doing is so routine that -- as I mentioned, some of this other service center work is done by graduate students. We even have -- for example, the Pharmaceutical Chemistry Department at the University of Kansas has a very nice summer student program. And we have one to two

students a year in our lab who we train to operate the instrument. And the work that we actually did on these samples, those students could have done once they were trained to use the instrument.

Q. Do you consider yourself an expert in solid state NMR?

MR. RIDDLE: Objection, form.

A. Solid state NMR can be used for quite a variety of things. I have a fair bit of experience doing a number of those. I'm not exactly sure what constitutes being an expert in something.

Q. BY MS. KRUZE: Well, how would you define the term "expert"?

MR. RIDDLE: Objection, form.

A. Well, that's a good question.

I guess in very simple terms it's someone who has a fairly extensive knowledge of something.

Q. BY MS. KRUZE: And you testified earlier that you've written approximately 25 to 30 papers about solid state NMR; is that right?

MR. RIDDLE: Objection, form.

A. I don't recall exactly what I said.

Q. BY MS. KRUZE: And I'm not trying to trick you. So -- let me just rephrase the question.

Do you think that you have extensive

knowledge regarding solid state NMR?

A. As I said, I've been operating NMR spectrometers for quite a few years. In my graduate work actually I didn't, because my project was to combine both theoretical calculation work and experimental work. As it turns out, quite a bit of the work that I did on those projects was actually the calculation side. I was the only one in those projects, at least in most of those projects, who did any of the calculation work. And in quite a few of those, in fact, the solid state NMR was done by someone else on the paper. This is how, of course, academic research is done. It's usually a -- several graduate students may be asked to --

Q. Pardon me.

A. Several graduate students may be asked to contribute to a particular project.

As a post-doc at the University of Utah, in the sense of splitting my time between both calculation and experimental work, I did that as well.

Q. So do you think that you have extensive experience in solid state NMR?

A. I suppose if working with something for over 10 years is, yes.

Q. Okay. What expertise do you have in

interpreting solid state NMR results?

MR. RIDDLE: Objection, form.

A. The majority of the work that I have done, if you look at what I did as a graduate student and as a post-doc at the University of Utah, I was interested there in a facet of solid state NMR that involves the -- what's called the chemical shift tensor.

And most of the work that I did, in particular at the University of Utah, was to perform experiments on various samples where we would measure those chemical shift tensors and compare those to theoretical calculations that were meant to complement that work.

When I got to Professor Munson's group, one thing I was actually a little surprised at was that the majority of the work we do is very simplistic. It is some of the -- these are some of the simplist experiments you can do with solid state NMR.

And, for example, every time you use a solid state NMR instrument you acquire some data on a standard compound to calibrate the instrument. And, in fact, the very -- the very experiments that I did in this matter are ultimately the very same experiments, but simply applied to a different sample.

Q. BY MS. KRUZE: Did Dr. Munson ask you to

entire process for whichever ones he might have been present for.

MS. KRUZE: Okay. I know we're probably about to run out of tape; so this is a good time for us to take another break.

THE VIDEOGRAPHER: We're off the record. It's 11:23 a.m. Central Standard Time.

(Recessed from 11:23 a.m. to 11:37 a.m.)

THE VIDEOGRAPHER: We're back on the record. It's 11:37 a.m. Central Standard Time.

Q. BY MS. KRUZE: So before the break, we were talking about Dr. Munson's presence while you were doing these samples.

Did you save all of the data associated with your 34 runs?

A. Yes.

Q. And did you ever print out a hard copy of any of the data?

A. For some of the conference calls that I was asked to attend, I believe that I was -- I believe we had some printouts at at least some of those teleconferences.

Q. Did you ever save over original data?

A. No.

Q. Did you ever rename a file name?

MR. RIDDLE: Objection, form.
A. No.
Q. BY MS. KRUZE: And where is all of this data stored from these 34 runs?
A. On the Sun computer that's the -- on the console of the spectrometer.
Q. And that computer is a Sun work station?
A. Yes. It's a Sun Sparkstation I think is its model.
Q. Did you record any information on paper when you conducted your NMR experiments?
A. These experiments are actually so routine that all the parameters that are specific to the experiment are stored as part of the spectrometer software. So, no, I didn't handwrite anything.
Q. So you did not keep a lab notebook?
A. No.
Q. Did you record any information about the samples you received?
A. No.
Q. For example, what the sample even was?
MR. RIDDLE: Objection, form.
A. The file name on the spectrometer I might include something in its file name that would help determine which spectrum that was.

Q. BY MS. KRUZE: What about the amount of sample you received? Did you record that information?
A. No.
Q. Do you usually keep a lab notebook in your work as a research associate?
A. No, I do not.
Q. Did you send all of the data from all of the runs to Dr. Munson?
A. At some point he asked me to provide him a CD with all of the data that was collected, and I did provide that to him.
Q. Did you ever send Elan's counsel the data from the runs?
A. No.
Q. Do you know if Dr. Munson sent all of the data from all of the NMR runs to Elan's counsel?
A. I have no personal knowledge of what Professor Munson sent.
Q. Are there any spectra -- actually, strike that.
Is there any data that you did not give to Dr. Munson in relation to this case?
A. No.
Q. Did any of the runs fail to produce spectra?
MR. RIDDLE: Objection, form.

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED,	)	
Plaintiff,	)	
vs.	)	Case No. 06438GMS
ABRAXIS BIOSCIENCE, INC.,	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF DEWEY H. BARICH, PhD
TAKEN BY DIANA B. KRUZE
ON BEHALF OF THE DEFENDANT
JANUARY 25, 2008
9:15 a.m.

REPORTED BY NAOLA C. VAUGHN
REGISTERED PROFESSIONAL REPORTER
CERTIFIED COURT REPORTER (MO #1052
CERTIFIED REALTIME REPORTER

both the federal and the local rules.

Q. BY MS. KRUZE: So let's talk about your work for Elan. When did your work with Elan begin?

MR. RIDDLE: Objection, form.

A. Well, I'm a little confused. I don't work for Elan. I work for Professor Munson.

Q. BY MS. KRUZE: How did you first hear about this case?

A. What do you mean by this case?

Q. This litigation.

A. Let's see. I think sometime in January of 2007 I was invited to a teleconference regarding some data I had collected for Professor Munson. And at that teleconference I came to find out that these samples had to do with a litigation case.

Q. And what did you discuss in that teleconference?

MR. RIDDLE: Objection, form.

And to the extent Dr. Barich that your answer would reveal any attorney-client communication, then I would instruct you not to answer that question. If your answer -- if you can answer without revealing any attorney-client communication, then you may answer the question.

A. Okay. Well, on the advice of counsel, I've

Q. BY MS. KRUZE: What was the assignment that he gave you?

A. He told me that there was a project coming up that would be associated with Professor Berkland. And some period of time before I was provided any samples -- he told me this a few days perhaps. And he said that he would let me know that something was coming up, and at some point he said, you know, we're ready to start this work; talk to Professor Berkland about the samples.

Q. Okay. And what work specifically did either Dr. Munson or Dr. Berkland request that you do?

A. Professor Munson asked me to collect routine solid state NMR experiments on the samples that were provided by Professor Berkland.

Q. And what are your qualifications for that work?

A. I've been operating solid state NMR spectrometers for -- I suppose at the time about 13 years. Although the work that we were doing is so routine that -- as I mentioned, some of this other service center work is done by graduate students. We even have -- for example, the Pharmaceutical Chemistry Department at the University of Kansas has a very nice summer student program. And we have one to two

EXHIBIT 10

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff,	)	
vs.	)	Case No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC., Defendant.	)	

ORAL VIDEOTAPED DEPOSITION

ERIC J. MUNSON, Ph.D.

NOVEMBER 29, 2007

ORAL VIDEOTAPED DEPOSITION OF ERIC J. MUNSON, Ph.D., produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 29th day of November, 2007, from 9:07 a.m. to 7:15 p.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Baker Botts, 910 Louisiana, 32nd Floor, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

more specific when you're referring to sample preparation. Are you referring to specifically as applies to solid-state NMR spectroscopy? To general sample preparation?

Q. I'm asking you as applies to the experiments you do in your laboratory.

A. For many of the experiments in our laboratory what we will do is take a particular sample, place it into a rotor and then spin that particular sample to acquire solid-state NMR data.

Q. Where are the details of how you do that experiment recorded?

A. The procedure is very well established. So because it's the same procedure that we do time and again, we typically don't record those details.

Q. So the people in your laboratory don't keep laboratory notebooks? Is that your testimony to the jury, Dr. Munson?

MR. SULLIVAN: Objection. Mischaracterizes, argumentative.

A. Once again, that's a very -- that is not what I am saying at all; and I find that to be a misleading question because, once again, that's not at all what I've referred to.

Q. (By Ms. Evans) Well, I'm having a hard time

and asked him to run them under my supervision.

Q. Who is Dr. Dewey -- could you spell his name, please, for the record, the person who actually did the experiments?

A. Could you be a little more specific what you mean by "do the experiments"?

Q. Well, you just told me that you gave the samples to Dr. Dewey Barich to run the analyses. That's the person who did the experiments, the hands-on person, right?

MR. SULLIVAN: Objection.

A. Once again, I guess, what are you referring to? Are you talking about Dr. Barich as -- well, could you be a little bit more specific when you talk about running the experiments?

Q. (By Ms. Evans) Well, in your report you set forth certain solid-state NMR data, correct?

A. That is correct.

Q. Who did the experiments to acquire that data?

A. So are you talking about who sat down at the NMR spectrometer and acquired the data?

Q. That would be the person who ran the experiments, yes. That's what I'm referring to, Doctor.

MR. SULLIVAN: Objection. Don't argue with the witness.

A. So the person who ran the experiments and acquired the data is Dr. Dewey Barich.

Q. (By Ms. Evans) Could you spell --

A. His name is D-e-w-e-y, B-a-r-i-c-h.

Q. Why did you ask Dr. Barich to do the experiments for this litigation?

MR. SULLIVAN: Objection.

A. Could you be a little bit more specific? You're asking why I did this?

Q. (By Ms. Evans) That's right. Why didn't you do it yourself?

MR. SULLIVAN: Objection.

Q. (By Ms. Evans) Why didn't you do the experiments yourself, Doctor?

MR. SULLIVAN: Objection. Mischaracterizes.

A. Well, once again, can you be a little bit more specific when you're talking about the question of why I did not run the experiments?

Q. (By Ms. Evans) No, I don't think so, Doctor, because I don't know why you didn't run the experiments yourself. I need you to tell me that.

MR. SULLIVAN: Objection.

Argumentative.

A. So one of the reasons that I asked Dr. Barich to run these particular experiments is the fact that he is eminently qualified to do solid-state NMR spectroscopy, especially as it's related to the analysis of paclitaxel. Dr. Barich has a Ph.D. degree in chemistry.

Q. Has a what?

A. Ph.D. in chemistry.

Q. Uh-huh.

A. He also did a postdoctoral associate at the University of Utah for four years. During the time he was at the University of Utah, he acquired some of the first solid-state NMR spectra of paclitaxel. So he has extensive experience with analyzing paclitaxel using solid-state NMR spectroscopy. He is also a very competent scientist. And those are some of the reasons why I asked Dr. Barich.

Q. So in your opinion Dr. Barich was more qualified to run the studies set forth in your report than you were?

MR. SULLIVAN: Objection. Mischaracterizes.

Q. (By Ms. Evans) Is that your testimony?

A. Once again, I would not agree with that

particular statement. In many respects -- first of all, as I noted, one of the aspects is that Dr. Barich has extensive experience dealing with paclitaxel, which is related to some of the safety concerns of handling a sample such as paclitaxel.

However, as he was doing the analysis, he was constantly in touch with me as to what sort of parameters should be chosen. So a lot of things that I did was supervise the data acquisition.

Q. Now, you don't have any prior experience with solid-state NMR of paclitaxel. Is that correct?

A. Could you be a little bit more specific?

Q. No.

A. Well, that's a very vague question. I don't know if you're talking about, you know, has paclitaxel ever been in my NMR spectrometer? Has it ever been run in my laboratory? Is it a question -- like I said, this is a very vague question.

Q. Well, you told me that Dr. Barich had prior experience with running solid-state NMR -- with solid-state NMR analysis of paclitaxel. I'm asking you if you have prior experience. This is your terminology, Doctor.

Do you have as good experience with solid-state NMR of paclitaxel as Dr. Barich does?

A. Once again, that's a very wide-open question. So I don't know if you're referring to, for example, the safety concerns associated with handling of paclitaxel, if you're concerned with the data acquisition part of obtaining the spectra of paclitaxel, if you're talking about the interpretation of the data that emerges from paclitaxel. If you could please be more specific, I can try and answer your question better.

Q. Prior to this work, has paclitaxel ever been analyzed in your laboratory in any way prior to the work in this litigation?

A. Not to my knowledge.

Q. And, to your knowledge, Dr. Barich did do a solid-state NMR spectroscopy of paclitaxel previously, correct?

A. Dr. Barich has published a paper related to solid-state NMR spectroscopy of paclitaxel, which means that he is very experienced with the handling of paclitaxel, which is one of the reasons and probably the primary reason associated with asking him to handle the sample preparation and data acquisition steps associated with paclitaxel.

Q. So you said you were in close contact with Dr. Barich regarding parameters, correct, for the

experiments in connection with this litigation, right?

A. If you could be a little bit more specific. I assume that you're referring to when I was talking about the timeline Dr. Barich and I were discussing extensively how to acquire the data associated with paclitaxel.

Q. Tell me about that conversation.

A. I don't remember the specific details of each and every conversation that we had. But, for example, what would typically happen is Dr. Barich would provide anal -- or acquire spectrum. We would discuss it. I would then make a decision regarding what parameters might be used to acquire the data.

Q. So the parameters were not identical in every run you did, every analysis you did in connection with this litigation? You changed the parameters?

MR. SULLIVAN: Objection.

Q. (By Ms. Evans) Is that correct?

A. Once again, I guess what parameters are you referring to?

Q. The parameters you're referring to, Doctor. It's your word. What parameters are you referring to?

A. So once we established the parameters that we wanted to use to acquire data of paclitaxel, those are the parameters that we used to obtain all of our data of paclitaxel.

Q. Where did you write down the parameters that you tried along the way and the ones you ended up with? Where is that written down?

A. I apologize. Could you repeat the question?

MS. EVANS: Ms. Reporter?

(The record was read as requested.)

A. I heard two questions there. Could you please ...

Q. (By Ms. Evans) Answer them both, please.

MR. SULLIVAN: Objection. Compound.

A. Which question would you like me to answer first?

Q. (By Ms. Evans) Either.

A. Okay.

THE WITNESS: Could you please read back the first question?

(The record was read as requested.)

A. Once again, could we get some clarification about the "you" part? So, for example, from my impression "you" would be referring to as Dr. Barich and I were performing these experiments.

Q. (By Ms. Evans) Was anyone else involved in these experiments other than you and Dr. Barich?

A. Could you be a little bit more specific? What experiments are you referring to?

Q. The experiments done in connection with this litigation.

A. Once again, that's very vague.

Q. How many experiments did you do for Elan's counsel?

A. If you're referring to the experiments that we performed related to the solid-state NMR analysis --

Q. Were there other experiments that you performed for Elan's counsel other than solid-state NMR analysis, Doctor?

A. Not that I can recall.

Q. All right. So I'm trying to understand what your confusion is then about the experiments.

A. So, once again, as long as we're on the same page in the fact that we're talking about the solid-state NMR experiments that were performed by Dr. Barich and I.

Q. Uh-huh. Anyone else involved in that?

A. Once again, can you be a little bit more specific? Anyone else involved in ...

Q. The solid-state NMR experiments performed in your laboratory relating to this litigation.

A. No. Dr. Barich and I were the only ones who were involved.

Q. Did Dr. Barich keep a laboratory notebook?

A. Not to my knowledge.

Q. Did you --

A. Once again, not to my knowledge as it's related to this particular litigation.

Q. So Dr. Barich -- you said you didn't have any postdoctoral fellows, correct, in your laboratory. Is that correct?

A. That's correct.

Q. So how did you come to ask Dr. Barich to do this work?

A. Dr. Barich is a research associate in my laboratory.

Q. A research associate. And tell me what a research associate is.

A. The difference between -- well, a research associate is someone who has a higher title than that of a postdoctoral associate.

Q. And you're getting paid for the work that Elan asked you to do in this litigation, correct?

A. Could you be a little bit more specific when

EXHIBIT 11

REDACTED

EXHIBIT 12

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED,	)	
Plaintiff,	)	
vs.	)	Case No. 06438GMS
ABRAXIS BIOSCIENCE, INC.,	)	
Defendant.	)	

VIDEOTAPED DEPOSITION OF DEWEY H. BARICH, PhD
TAKEN BY DIANA B. KRUZE
ON BEHALF OF THE DEFENDANT
JANUARY 25, 2008
9:15 a.m.

REPORTED BY NAOLA C. VAUGHN
REGISTERED PROFESSIONAL REPORTER
CERTIFIED COURT REPORTER (MO #1052
CERTIFIED REALTIME REPORTER

been instructed not to answer that question.

Q. BY MS. KRUZE: Were attorneys present at that meeting in January?

A. It was my understanding -- I didn't get introduced to everyone on the other end of the teleconference. It is my understanding that some or all of those people are attorneys.

Q. Do you remember any of the names of the people around that teleconference?

A. I believe one name was Bill. And that's the only name I remember.

Q. Okay. Did you ever have any discussions about your NMR testing outside of the presence of attorneys or what you thought were attorneys?

A. Could you just repeat that one?

Q. Sure. Did you ever have any discussions about your NMR testing without attorneys?

MR. RIDDLE: Objection, form.

A. As part of collecting the data on these samples, I was doing it under the direction of Professor Munson. And so he and I discussed at times what I was -- what the status of that work was. I came to him to find out what parameters he might like to have used for any future analyses.

When you're collecting solid state NMR data,

EXHIBIT 13

REDACTED

EXHIBIT 14

REDACTED

EXHIBIT 15

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

ELAN PHARMA INTERNATIONAL LIMITED, Plaintiff,	)	
vs.	)	Case No. 06-438-GMS
ABRAXIS BIOSCIENCE, INC., Defendant.	)	

ORAL VIDEOTAPED DEPOSITION
CORY BERKLAND, Ph.D.
DECEMBER 14, 2007

ORAL VIDEOTAPED DEPOSITION OF CORY BERKLAND, Ph.D., produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on the 14th day of December, 2007, from 9:12 a.m. to 7:36 p.m., before Melinda Barre, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of Baker Botts, 910 Louisiana, 32nd Floor, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

laboratory, that always -- almost always is at the exact same settings.

At the time David was in the laboratory, this was the centrifuge he used continually. He knew how to set up this machine so that it ran samples and separated particulates with a particular size routinely. In addition, he was used to handling nanoparticulate formulations. And he did this the way you would expect a professional in the laboratory to do this. He would use a similar approach and a similar methodology every time. He would take the same precautions to protect himself. He would take similar precautions to protect the integrity of the sample.

Q. Is it scientifically accepted practice to not write down experiments in a laboratory notebook?

MR. SULLIVAN: Object.

A. I think I addressed that question.

Q. (By Ms. Kruze) And I think I'm looking for an answer to the question.

A. Okay.

Q. If your recordkeeping practice was challenged by someone on the fact that it's not scientifically accepted practice, how would you respond?

MR. SULLIVAN: Object.

A. I would respond in the same way I've responded previously, that there is no rule that says information has to be recorded into a laboratory notebook. As a matter of fact, there are a variety of programs out there right now that are computational-based laboratory recording software.

So instead of writing this down into a laboratory notebook, you create a document using the appropriate software; and you record your experiments in that manner. So the use of a laboratory notebook in my mind is not a critical component to good bookkeeping or good recordkeeping.

Q. (By Ms. Kruze) Did you record the lot number of the Abraxane vials that you received?

A. It was my impression that the lot number of the Abraxane vials was available to me because those particular boxes which show the lot number have been recorded prior to being sent to me.

Q. So you didn't record that?

A. I think I have -- in my expert report I have an image of one of those boxes that shows the lot number.

Q. How many boxes did you receive?

A. I think the total number of boxes we

EXHIBIT 16

REDACTED

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of April, 2008, the attached **REDACTED PUBLIC VERSION OF DECLARATION OF JEFFREY D. SULLIVAN IN SUPPORT OF PLAINTIFF ELAN PHARMA INTERNATIONAL LIMITED'S OPPOSITION TO ABRAXIS'S MOTION IN LIMINE NO. 2 TO EXCLUDE EVIDENCE OF ELAN'S SSNMR TESTING OF ABRAXANE®** was served upon the below-named counsel of record at the addresses and in the manner indicated:

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/s/ John G. Day

John G. Day

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