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Attorneys for Anthony H.N. Schnelling, as Post-Dissolution Trustee of Impath Inc. and Trustee of the Impath Bankruptcy Liquidating Trust

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE SOUTHERN DISTRICT OF NEW YORK**

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 IN RE: : Chapter 11
 :
 IMPATH INC., et al., : Case No. 03-16113 (PCB)
 :
 Debtors. : (Jointly Administered)
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FIFTH POST-CONFIRMATION STATUS REPORT OF THE POST-DISSOLUTION TRUSTEE OF IMPATH INC. AND THE TRUSTEE OF THE IMPATH BANKRUPTCY LIQUIDATING TRUST PURSUANT TO SECTION 1106(a)(7) OF THE BANKRUPTCY CODE, LOCAL RULE 3021-1 AND THE POST-CONFIRMATION ORDER

TO THE HONORABLE PRUDENCE C. BEATTY,
 UNITED STATES BANKRUPTCY COURT JUDGE:

Anthony H.N. Schnelling, as Post-Dissolution Trustee of Impath Inc. and Trustee of the Impath Bankruptcy Liquidating Trust (collectively, the “Trustee”), by his undersigned counsel and pursuant to Section 1106(a)(7) of Title 11 of the United States Code (the “Bankruptcy Code”), Local

DKT. NO. 1512
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Bankruptcy Rule (“Local Rule”) 3021-1 and this Court’s Post-Confirmation Order and Notice dated October 4, 2005 (the “Post-Confirmation Order”), represents:

I. Background

1. On September 28, 2003 (the “Petition Date”), Impath Inc. (“Impath”) and its debtor subsidiaries, as debtors and debtors in possession (together, the “Debtors”), each filed in this Court voluntary petitions for relief under Chapter 11 of the Bankruptcy Code.

2. During the course of these proceedings, substantially all of the Debtors’ assets were sold and a plan of liquidation was filed, subsequently amended, and confirmed by the Court (the “Plan”).

3. The Plan became effective on July 22, 2005 (the “Effective Date”), at which time the Debtors’ estates were substantively consolidated. Pursuant to the Plan, certain assets of the Debtors were transferred for administration by the Trustee as Liquidating Trustee of the Impath Bankruptcy Liquidating Trust (the “Liquidating Trust”) and certain assets remained with Impath Inc., through its wind-down, for administration by the Trustee as its Post-Dissolution Trustee.

4. On October 5, 2005, the Post-Confirmation Order was entered requiring the Trustee to file on January 15th, April 15th, July 15th and October 15th of each year following the Effective Date until a final decree has been entered “a status report detailing the actions taken by the Trustee and the progress made toward consummation of the Plan”.

5. The Trustee has filed the following Post-Confirmation Reports to date: (i) First Post-Confirmation Report filed on January 23, 2006 [Docket No. 1461]; (ii) Second Post-Confirmation Report filed on April 13, 2006 [Docket No. 1468]; (iii) Third Post-Confirmation

Report filed on July 25, 2006 [Docket No. 1489]; and (iv) Fourth Post-Confirmation Report filed on October 17, 2006 [Docket No. 1493].

6. The Trustee files this Fifth Post-Confirmation Report to describe the actions he has taken and the progress that has been made towards consummation of the Plan since October 17, 2006.

II. Progress Made Toward Consummation of the Plan

A. Settlements

7. On January 10, 2007, after establishing appropriate reserves for continued costs of administration, the Trustee distributed the aggregate amount of \$22,840,260.24 in cash, or \$1.36, per unit, to the holders of record of Class A Beneficial Interests under the Plan, resulting from the following settlements of pending litigation.

(i) Former Accountants Lawsuit.

8. Pursuant to the Stipulation of Settlement, as incorporated into the Plan, all litigation claims which belong to the Debtors and the Former Shareholders were absolutely and unconditionally assigned to the Trustee to prosecute, abandon or settle, subject to Bankruptcy Court approval.

9. On July 27, 2005, the Trustee filed a Complaint in the U.S. District Court for the District of New Jersey (Case No. 05-cv-03756-DMC-MF) (the "New Jersey Court") against the Debtors' former accountants (the "Former Accountants") for damages arising out of the Former Accountants' alleged knowing and/or reckless participation in Impath's pre-petition accounting fraud.

10. Following preliminary motions and discovery, the Trustee and Former Accountants, after extensive negotiations, entered into a Settlement in November 2006 (the

“Former Accountants Settlement”). After notice to all parties-in-interest, the Bankruptcy Court entered an Order approving the unopposed settlement on December 12, 2006, and setting December 29, 2006 as the record date for determining holders of Class A Beneficial Interests entitled to distributions from the Former Accountants Settlement.

11. The aggregate amount of the Former Accountants Settlement was \$23,150,000.00. Pursuant to the Stipulation of Settlement, as incorporated into the Plan, after fees and expenses, 22% of the net proceeds received by the Trustee from prosecution or settlement of the Litigation Claims was to be distributed by the Trustee to the escrow agent for a Class Action Settlement Fund (the “Class Action Fund”) for distribution to Former Shareholders, and the balance of 78% of the net proceeds was to be distributed by the Trustee to the holders of Class A Beneficial Interests in the Liquidating Trust.

12. After deducting fees and expenses and other adjustments, the Former Accountants Settlement produced \$4,516,447.89 for the Class Action Fund and \$16,794,309 or \$1.00 per unit, for the Class A Beneficial Interest holders. The Escrow Agent for the Class Action Fund received the Former Shareholders’ distribution on or about December 27, 2006; the Trustee issued his distribution checks to the Class A Beneficial Interest holders, in the aggregate amount of \$16,794,309 on account of the Former Accountants Settlement, on January 10, 2007.

(ii) Genzyme Disputes

13. The Genzyme dispute arises from the Asset Purchase Agreement (“APA”) pursuant to which Genzyme Corporation (“Genzyme”) purchased Impath’s core businesses. The APA provided for a purchase price of \$215 million, subject to certain adjustments,

including a “Purchase Price Adjustment” based on the “Working Capital of the Business” at closing compared to the “Target Working Capital”.

14. In accordance with the APA, \$2,700,000 of the Purchase Price was placed in escrow (the “Escrow”), with an escrow agent (the “Escrow Agent”), pending the final determination of the Purchase Price Adjustment and, at closing, Genzyme paid the Debtors the sum of \$212,083,240.81.

15. Following closing, Genzyme asserted a claim against the Debtors for a substantial Purchase Price Adjustment and requested return of \$7,613,646 paid by Genzyme as part of the purchase price. Genzyme also filed identical administrative claims in the amount of \$7,613,646 in three of the Debtors’ chapter 11 cases based on its claim for Purchase Price Adjustment. The Debtors disputed Genzyme’s claim and asserted Genzyme owed an additional sum in excess of \$4,000,000, increasing the amount due under the APA. The Trustee reserved a sum sufficient to cover the difference between the Escrow Amount and the asserted Genzyme claim.

16. Under the APA, any dispute regarding a Purchase Price Adjustment was to be submitted to a nationally-recognized independent accounting firm for binding arbitration. Pursuant to the APA, and after extensive discussion and negotiation, Genzyme and the Trustee agreed on the selection of Dennis S. Neier of Eisner LLP, as the “Working Capital Referee” to resolve their dispute.

17. The arbitration began in August 2006. In the arbitration, each party asserted against the other a claim of \$10,000,000 (or more). The arbitration was scheduled for hearing beginning on February 26, 2007, with sixteen days set aside for trial.

18. After intensive discovery and extensive negotiations, in December 2006, the Trustee and Genzyme entered into a Settlement (the “Genzyme Settlement”), subject to Bankruptcy Court approval, under which: (i) Genzyme’s administrative claim was reduced and allowed in the amount of \$1,350,000 in the Impath Inc. case and disallowed in the other two cases, and the Trustee released his counterclaim against Genzyme; (ii) the Escrow Agent was directed to pay Genzyme from the Escrow the sum of \$1,350,000, less its share of escrow fees, in full satisfaction of Genzyme’s allowed administrative claim and to pay the Trustee the balance of the Escrow of \$1,350,000, plus accrued interest in the amount of approximately \$206,000, less his share of escrow fees, each promptly after entry of the order approving the Genzyme Settlement; (iii) the parties would exchange mutual releases of all claims against each other subject to their agreement that certain provisions of the APA would continue in effect; and (iv) in the event of an appeal and final reversal of the order approving the Genzyme Settlement, Genzyme and the Trustee would return the escrow the Escrow Agent, the Trustee would reserve for the full amount of the Genzyme administrative claim, the settlement would become null and void, and the parties would resume arbitration. Following uncontested notice to all parties-in-interest, the Bankruptcy Court entered an Order approving the Genzyme Settlement on December 28, 2006, setting December 29, 2006 as the record date for determining holders of Class A Beneficial Interests entitled to distribution from the Genzyme Settlement.

19. No appeal having been taken, on December 28, 2006, the Escrow Agent was jointly directed by the Trustee and Genzyme to disburse, and so disbursed, all sums from the Escrow in accordance with the Genzyme Settlement.

20. On January 9, 2007, the Trustee distributed cash in the aggregate amount of \$6,045,951.24, or an additional \$.36 per unit, to the holders of record of Class A Beneficial Interests under the Plan, on account of the Genzyme Settlement, including amounts previously reserved.

B. Claims Resolution

(i) Administrative Claims.

21. The Genzyme administrative claim was reduced, allowed, and paid in the amount of \$1,350,000 (minus escrow fees), as described more fully above.

22. The Trustee has entered into a settlement with respect to the sole remaining New York State Medicare claim. The settlement has been noticed to parties in interest.

(ii) Remaining Omnibus Claims.

23. On November 18, 2005, the Trustee filed the Ninth Omnibus Objection to Proofs of Claim (Late) (Books and Records) (CBOE and Adelson Claims) (Docket No. 1444) (the "Ninth Omnibus Objection"). All but two claims were resolved on or before the scheduled hearing and the hearing on the two remaining claims, consisting of a priority tax claim in the amount of \$443,296 and surety bond claims in the aggregate amount of \$688,439, was adjourned to allow the parties to attempt a consensual resolution. The Trustee disputes his liability for these claims and is working to resolve them.

C. Recovery of Additional Assets (Tax Refund Claims).

24. The Trustee and its predecessor, the Debtors, have filed federal, state and local tax refund claims of approximately \$28,500,000, including interest, for years 1995 through 2004 of which \$21,500,000 relate to federal returns and \$7,000,000 relate to state and local returns for these years. The sum of \$2,016,556 of state and local tax refunds have been

collected to date. Interest accrues at the various state and local rates, where applicable, on the state and local refund claims filed.

25. To the extent that the federal income tax refunds are allowed, interest is due from the date that the refund claims were filed. Federal refund claims were filed for tax years 1995-2003 in November 2004 totaling approximately \$16,200,000 and for tax years 2004 and 2005 in August 2006 and November 2006, respectively, totaling approximately \$5,300,000.

26. The Internal Revenue Service (the "IRS") is conducting an audit of tax years 1999 through 2005, and has issued Informational Document Requests to the Trustee for the production of all accounting system transaction data and other documentation for the tax years under audit. To date, the Trustee and his professionals have produced and delivered the data requested. It is expected that the IRS will make additional requests which the Trustee and his professionals will respond to, on a timely basis, in an effort to expedite the audit process.

27. While it is not possible to predict when and in what amount the taxing authorities will finally allow the refund claims, the Trustee is confident that the extensive work product presented to the IRS agents by the Trustee, as outlined in the First Post-Confirmation Report, and the timely responses to each of the IRS' Informational Document Requests will facilitate the audit process. The Trustee's professionals continue to meet with the IRS agents assigned to the matter on an ongoing basis.

D. Cash Remaining.

28. Following the January 9, 2007 distributions on account of the Former Accountants Settlement and Genzyme Settlement, Impath Inc. has retained cash of approximately \$4,100,000. Of this amount, \$1,100,000 is reserved for disputed claims and \$3,000,000 is allocated to the costs of pursuing recoveries of federal, state and local income

tax refund claims (including appeals, which the Trustee hopes will not be necessary), and for the costs of ongoing administration. The Liquidating Trust has retained cash of approximately \$790,000. To the extent reserved funds are not required to be spent, they will be distributed to the holders of Beneficial Interests.

Dated: January 19, 2007

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