

SAUL EWING LLP
John J. Jerome (JJ-2413)
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
Telephone: (212) 672-1996
Facsimile: (212) 672-1920

Joyce A. Kuhns (JK-8435)
Lockwood Place
500 East Pratt Street, Suite 800
Baltimore, MD 21202-3171
Telephone: (410) 332-8600
Facsimile: (410) 332-8862

Attorneys for Anthony H.N. Schnellling, 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)
-----X

**TWELFTH 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. Schnellling, as Post-Dissolution Trustee of Impath Inc. and Trustee of the Impath Bankruptcy Liquidating Trust (collectively, the “Trustee”), by his undersigned counsel and

DKT. NO. 1530
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pursuant to Section 1106(a)(7) of Title 11 of the United States Code (the "Bankruptcy Code"), Local 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]; (iv) Fourth Post-Confirmation Report filed on October 17, 2006 [Docket No. 1493]; (v) Fifth Post-Confirmation Report filed on January 19, 2007 [Docket No. 1512]; (vi) Sixth Post-Confirmation Report filed on April 20, 2007 [Docket No. 1515]; (vii) Seventh Post-Confirmation Report filed on July 16, 2007 [Docket No. 1517]; (viii) Eighth Post-Confirmation Report filed on October 17, 2007 [Docket No. 1521]; (ix) Ninth Post-Confirmation Report filed on January 7, 2008 [Docket No. 1523]; (x) Tenth Post-Confirmation Report filed on May 19, 2008 [Docket No. 1525], and (xi) Eleventh Post-Confirmation Report filed on October 9, 2008 [Docket No. 1527].

6. The Trustee files this Twelfth Post-Confirmation Report to describe the actions he has taken and the progress that has been made towards consummation of the Plan since October 9, 2008.

II. Progress Made Toward Consummation of the Plan

A. Claims Resolution

7. 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"). Only one claim remains, a priority tax claim by New York State for income taxes in the amount of \$443,296 for calendar years 2000 through 2002, which the Trustee disputes. The New York State tax department has completed its audit of the refund request for years 1999 through 2002 and has entered into a settlement agreement with Impath regarding the allowed amount of refunds for the subject period. There has been a delay in the processing of the refund due to sequential procedural issues related to resolving the prior

assessment of tax by New York State, an appeal of the assessment by Impath, and the aforementioned settlement being finalized. In addition, the Trustee is seeking to have New York State withdraw its administrative claim for the tax assessment based on the recent audit. The Trustee's tax counsel and tax advisors have been working with the New York State Tax Department to resolve the issues to expedite receipt of the tax refunds for years 1999 through 2002.

B. Recovery of Additional Assets (Tax Refund Claims)

8. The outstanding tax refunds to be recovered are approximately \$5,000,000, principally from the states of New York and California and the City of New York. There are also amounts outstanding from the states of Arizona, Florida, Massachusetts, Pennsylvania, and Utah that are being pursued on behalf of Impath. It is not certain that all of these amounts are recoverable.

9. New York State has concluded its audit of calendar years 1999 through 2002 (the "Period"). Impath had originally filed for tax refunds of \$1,547,770 for the Period. Upon completion of its audit, New York State and Impath have agreed that Impath is due \$1,507,266 in refunds for the Period, plus applicable interest earned for the Period. New York State is still auditing years 2003 through 2005. Impath has filed amended returns, claiming refunds in the amounts of approximately \$142,500, \$84,000 and 270,000 for tax years 2003, 2004 and 2005, respectively. At this time, New York State has not yet indicated what the results of the audit will be.

10. The State of California has advised Impath that it will be auditing all or some of the years 1999 through 2005. However, the periods to be audited and when the audit will begin has not yet been communicated to Impath or its tax advisors

11. Impath is not aware of what, if any, audits or additional reviews will be conducted by the other jurisdictions with whom outstanding refund claims are pending.

12. As previously reported, it was recently discovered that a 2003 Massachusetts state tax refund in the amount of \$178,776 was deposited by Zeptomatrix, one of the purchasers of certain assets of an Impath subsidiary, without the knowledge or consent of Impath. Impath disputes that this party was entitled to the tax refund under the related Asset Purchase Agreement and has initiated litigation against Zeptomatrix in the United States Bankruptcy Court to recover the tax deposit and prejudgment interest and other damages and costs, Adversary Proceeding No. 08-01623 (PCB). Preliminary discovery requests have been served by the Trustee on the Defendant. The outcome of this suit is uncertain at this time.

C. Status of Other Matters

13. Any interest received by Impath with respect to tax refunds is subject to federal and state income taxation. Impath has made requisite federal, state and local income tax deposits for 2008 because Impath will have taxable income for this year.

14. With regard to the remaining audits, the state and local taxing authorities can raise other issues including allocation and apportionment of income or loss to a particular state or local government. The Trustee cannot predict how long this process will take for each of the respective jurisdictions to complete the audits or act on the refund claims.

D. Current Assets and Distributions to Beneficial Interests

15. As of December 31, 2008, the Trustee had approximately \$1,955,000 of cash on hand after payment of its 3rd quarter income tax deposits and operating expenses.

Dated: January 15, 2009

SAUL EWING LLP

John J. Jerome
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186
Telephone: (212) 672-1995

and

By: /s/ Joyce A. Kuhns
Joyce A. Kuhns
SAUL EWING LLP
Lockwood Place
500 East Pratt Street, Suite 800
Baltimore, MD 21202-3171
Telephone: (410) 332-8600

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

Miscellaneous:

03-16113-pcb Impath Inc.

U.S. Bankruptcy Court
Southern District of New York

Notice of Electronic Filing

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Case Number: 03-16113-pcb
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Docket Text:

Post-Confirmation Report. *[Twelfth 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]* filed by Joyce A. Kuhns on behalf of Anthony H.N. Schelling, Liquidating Trustee of the Impath Bankruptcy Liquidating Trust. (Kuhns, Joyce)

The following document(s) are associated with this transaction:

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271648a417c4a3a783c2eda45e807accd63731de33bb9811ddb7187b036]]

03-16113-pcb Notice will be electronically mailed to:

Michael A. Axel michael_axel@keybank.com

Ronald Scott Beacher rbeacher@daypitney.com

Christopher Robert Belmonte cbelmonte@ssbb.com, pbosswick@ssbb.com

Leslie Ann Berkoff lberkoff@moritthock.com

Douglas Bilotti dbilotti@mhhlaw.com

Susan G. Boswell sboswell@quarles.com

Mark A. Broude mark.broude@lw.com