

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

Irving E. Walker (IW-0952)  
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. 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**

-----X  
IN RE: : Chapter 11  
: :  
IMPATH INC., et al., : Case No. 03-16113 (PCB)  
: :  
Debtors. : (Jointly Administered)  
-----X

**THIRD 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

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 and are being liquidated under the supervision of the 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 15<sup>th</sup> 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's First Post-Confirmation Report was filed on January 23, 2006 [Docket No. 1461]. The Trustee’s Second Post-Confirmation Report was filed on April 13, 2006 [Docket No. 1468]. Copies may be found at the Trustee's website at <http://bridge6.bridgellc.com/clients/impath/index.htm>.

6. The Trustee files this Third Post-Confirmation Report to describe the actions he has taken and the progress that has been made towards consummation of the Plan since April 13, 2006.

## **II. Progress Made Toward Consummation of the Plan**

### **A. Claims Resolution**

#### **(i) Administrative Claims.**

7. Twenty claims were filed in the aggregate amount of \$7,990,237.83 as a result of the Administrative Claim Bar Date order entered by the Court in October 2005. Of these claims, the sum of \$7,613,646 is attributable to the claims of Genzyme Corporation ("Genzyme") for a purchase price reduction relating to the parties' Asset Purchase Agreement, dated as of February 27, 2004 (the "APA"). On March 22, 2006, the Trustee filed the Trustee's First Omnibus Objection to Certain Administrative Expense Claims (Late) (Insufficient Documents) in respect to these claims. Only three responses were filed by claimants. Of the three responsive claimants, two have provided the Trustee with additional documentation and are in negotiation with the Trustee to resolve their disputes and the third, Genzyme, entered into a stipulation with the Trustee to stay the objection proceeding, pending further court order. A more comprehensive update on the Genzyme dispute follows below at Section II.B. Following a hearing on May 4, 2006, the Court entered an order disallowing the balance of the administrative expense claims in the amount of \$332,750.11.

#### **(ii) Pre-Petition Claims.**

8. Prior to confirmation of the Plan, the Debtors filed eight omnibus objections to pre-petition claims filed against the Debtors' estates. 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 date of January 11, 2006. The two claims were adjourned, consisting of a priority tax claim in the amount of \$443,296 and an administrative claim in the amount of \$688,439, to allow the parties to attempt to resolve them

consensually. The Trustee disputes his liability for both claims and is working to resolve each.

B. Recovery of Assets

The following is a summary of the Trustee's efforts to recover significant assets:

(i) Tax Returns

9. The Trustee is pursuing federal, state and local tax refunds, together with interest thereon, of approximately \$28 million. These refund claims arise from the amended federal income tax returns filed by the Debtors for the years 1999 through 2002, state income tax returns for the year 2004, amended federal income tax returns to be filed for the years 2003 and 2004, and federal and state income tax returns to be filed by the Trustee for the years 2005 and 2006.

10. The Internal Revenue Service (the "IRS") has advised the Trustee that it will conduct an audit of tax years 1999 through 2004, 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 a substantial portion of the data requested and continue to work to produce the remaining portion as quickly and efficiently as possible. 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.

11. The Trustee has collected \$1,998,322 of state and local income tax refunds to date.

12. 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 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.

(ii) The KPMG Lawsuit

13. 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 KPMG for damages arising out of KPMG's alleged knowing and/or reckless participation in Impath's pre-petition accounting fraud.

14. KPMG subsequently filed a Motion to Dismiss the Complaint. A hearing on KPMG's Motion to Dismiss the Complaint occurred on February 2, 2006, at which the New Jersey Court denied the motion in its entirety.

15. Thereafter, on February 8, 2006, KPMG filed a motion requesting that the Court certify the Order for immediate appeal to the United States Court of Appeals for the Third Circuit pursuant to 28 U.S.C.A. § 1292(b). On May 31, 2006, the Court denied the motion in its entirety.

16. On April 4, 2006, the New Jersey Court entered a Discovery Order governing pretrial discovery procedures and timing. Among other things, the Discovery Order contemplates a completion of fact discovery by January 1, 2007 and completion of expert discovery by April 1, 2007. Consistent with the New Jersey Court's Order, the parties are engaged in discovery.

(iii) Genzyme Disputes

17. The Trustee is pursuing resolution of disputes with Genzyme arising out of the APA. The APA provided for a purchase price of \$215 million, subject to certain adjustments, including a "Purchase Price Adjustment", which are based on the "Working

Capital of the Business” at closing compared to the “Target Working Capital”. The Target Working Capital is an agreed amount based on the Debtors’ November 30, 2003 balance sheet.

18. Genzyme has asserted that it is entitled to a purchase price reduction of \$7,613,646. Conversely, the Trustee has maintained that Genzyme is liable to Impath for a purchase price increase of \$6,908,955. A portion of the purchase price paid by Genzyme, in the amount of \$2,700,000, constitutes “Holdback Escrow Funds” that are being held by a third party. The balance necessary to cover Genzyme’s disputed claim is being held as a cash reserve by the Trustee, pending the resolution of the parties’ dispute.

19. Pursuant to the APA, Genzyme and the Trustee are required to attempt to agree on a “Working Capital Referee” to resolve their dispute by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. When extensive negotiations failed to result in an agreement on the selection of a Working Capital Referee, the Trustee filed a motion on March 27, 2006 asking the Bankruptcy Court to appoint the Working Capital Referee pursuant to the APA. The hearing on this motion was originally scheduled for May 4, 2006, and was subsequently adjourned to July 27, 2006 to allow the parties to attempt to resolve their issues regarding a mutually acceptable arbitrator. As of the date of this report, the Trustee and Genzyme have agreed on the selection of a Working Capital Referee, and are scheduled to meet with the Referee on August 2, 2006, to discuss the schedule and procedures for the arbitration.

20. In connection with the APA, Impath and Genzyme also entered into a Transition Services Agreement, dated as of May 1, 2004 (the “TSA”), under which the parties agreed to provide certain services to each other to assist in the transition of the Impath business to Genzyme in exchange for certain charges set forth in the TSA. The

Trustee has agreed with Genzyme that it owes certain amounts to Impath under the TSA. In addition, Genzyme owed additional amounts to Impath in respect of collections of certain Impath receivables Genzyme had not acquired under the APA (the "Impath Collections"). After extensive negotiations, Genzyme agreed to pay the Trustee the sum of \$151,312 in full settlement of the amounts due under the TSA and the Impath Collections, without prejudice to the parties' respective rights, claims and defenses with respect to the dispute under the APA. An order entered to this effect on June 22, 2006 [Docket No. 1485], and Genzyme has paid the full amount due under the TSA to the Trustee.

Dated: July 25, 2006

**SAUL EWING LLP**

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

and

Irving E. Walker  
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