

Hearing Date and Time: December 12, 2006 at 11:00 a.m. (prevailing Eastern Time)
Response Date and Time: December 7, 2006 at 4:00 p.m. (prevailing Eastern Time)

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Attorneys for Anthony H.N. Schnelling, Trustee of the Impath Bankruptcy Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**NOTICE OF TRUSTEE'S PROPOSED SETTLEMENT OF LITIGATION CLAIMS
AGAINST DEBTORS' FORMER ACCOUNTANTS AND RELATED HEARING**

PLEASE TAKE NOTICE that the **Motion of Trustee of The Impath Bankruptcy Liquidating Trust for Order to Approve Settlement of Litigation Claims** (the "Litigation Claims") **against the Debtors' Former Accountants** ("Accountants") **and to Set Record Date for Distribution of Net Litigation Proceeds** (the "Motion") was filed with the U.S. Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") on November 17, 2006.

Relief Requested in the Motion

The Litigation Claims arose in connection with the issuance of fraudulent financial statements by the Debtors while the Accountants were providing auditing and other services to the Debtors ("Services"). The Litigation Claims consist of all claims arising out of the Services which, having belonged to the Debtors and former shareholders of the Debtors (the "Former Shareholders"), were assigned to the Trustee (the "Trustee") and the Impath Bankruptcy Liquidating Trust (the "Liquidating Trust") pursuant to the Debtors' Third Amended Joint Plan of

DKT. NO. 1496
DT. FILED 11/17/06

Liquidation under Chapter 11 of the Bankruptcy Code (the "Plan") and the Class Action Settlement with the Debtors and the Former Shareholders, dated January 14, 2005 (the "Class Action Settlement"). The assignments vested the exclusive power, authority and discretion in the Trustee to abandon, prosecute or settle the Litigation Claims, subject to Court approval. The Litigation Claims are the subject of a suit filed by the Trustee against the Accountants (the "Pending Litigation") in the United States District Court for the District of New Jersey (the "District Court").

Settlement Amount, Distribution and Record Date

The aggregate amount of the settlement is \$23,150,000. Pursuant to the terms of the Plan, Class Action Settlement, and Liquidating Trust, after fees and expenses, 22% of the net proceeds recovered by the Trustee from prosecution or settlement of the Litigation Claims are to be distributed by the Trustee to a Class Action Settlement fund (the "Class Action Fund") for distribution to Former Shareholders, and the balance of 78% of the net proceeds are to be distributed by the Trustee to the holders of Class A Beneficial Interests in the Liquidating Trust. After deducting fees and expenses and other adjustments, it is expected that the settlement will produce approximately \$4,480,000 for the Class Action Fund and approximately \$17,000,000 or slightly more than \$1 per unit for the Class A Beneficial Interests, for a total net distribution of \$ 21,480,000 to both groups.

The Trustee requests that the Court set close of business on December 29, 2006 as the record date for determining those holders of certificates of Class A Beneficial Interests entitled to distribution from the Settlement.

Purpose of Motion and Timing

By this Motion, the Trustee is seeking Bankruptcy Court approval of the settlement and dismissal of the Pending Litigation. The Motion must be approved by December 29, 2006 at which time, unless approved by the Bankruptcy Court, the settlement expires. If approved by the Bankruptcy Court, the settlement of the Litigation Claims would authorize the Trustee to exchange mutual releases with the Accountants, which, by reason of the assignments, would resolve all of the Litigation Claims of the Debtors and its Former Shareholders against the Accountants. Provided the settlement is approved by the Court and absent an appeal of the settlement, the Trustee anticipates distributing the proceeds of the settlement on or before January 10, 2007.

Status of Pending Litigation

On July 27, 2005, the Trustee filed a Complaint (the "Complaint") against the Accountants in the District Court for unspecified damages arising out of the Litigation Claims. The Accountants subsequently filed a Motion to Dismiss the Complaint challenging the standing of the Trustee to sue among other grounds. A hearing on the Accountant's Motion to Dismiss the Complaint was held on February 2, 2006, following which the New Jersey Court denied the Accountant's motion in its entirety. In its subsequent Answer to the Complaint, the Accountants

asserted 23 affirmative defenses. Thereafter, the Trustee's counsel, informally, and then formally in compliance with a Discovery Order entered on April 4, 2006, produced more than one million pages of electronic and paper documents to counsel for the Accountants and undertook to review more than 90,000 pages of documents produced to the Trustee by counsel for the Accountants. Both the Trustee and the Accountants have retained damage and accounting experts who have been consulted in connection with the litigation. Depositions of witnesses have not yet begun and it is anticipated that continued discovery and a full trial of the factual and legal issues involved would likely take more than one year. For the past several months the parties have engaged in negotiations to resolve the suit to save costs and the delay of continued litigation.

The Settlement is Fair and Equitable

As explained more fully in the Motion, the Trustee believes that the settlement is fair and equitable and in the best interest of the Liquidating Trust and its beneficiaries. The claims and issues involved in the Pending Litigation are complex, and the outcome of the Pending Litigation is far from certain. Although the Trustee believes that the claims against the Accountants are meritorious, the Pending Litigation is inherently risky and costly. Certain former senior officers of the Debtors, some of whom were also directors, either pled guilty to or have been convicted of certain crimes relating to the accounting irregularities which are the subject of the Pending Litigation. The Accountants have asserted, in their defense, that the conduct of these individuals should be imputed to the Trustee as successor to the Debtors and thereby bar his claims against the Accountants. The Accountants have also denied that they had knowledge of the accounting irregularities as a defense to the federal securities law claims asserted by Trustee in respect of the assigned claims of the Former Shareholders. Even if the Trustee were to be successful in prosecuting the suit, the amount of any recovery, net of litigation expense, is also uncertain. Given these and other uncertainties, and the substantial cost and delay of further litigation, the Trustee believes that the settlement is fair and reasonable and in the best interests of the Liquidating Trust and those parties holding beneficial interests in the Trust.

Notice of Objection Deadline and Hearing on the Motion

Any objection to the Motion must be filed on or before **December 7, 2006 by 4:00 p.m.** (prevailing Eastern Time). At the same time, you must also serve a copy of any such objection upon the following parties:

Irving E. Walker, Esquire
Joyce A. Kuhns, Esquire
Saul Ewing LLP
Lockwood Place
500 East Pratt Street
Baltimore Maryland 21202

John J. Jerome, Esquire
Timothy E. Hoeffner, Esquire
Saul Ewing LLP
Centre Square West
1500 Market Street, 38th Floor
Philadelphia, PA 19102-2186

A HEARING ON THE MOTION WILL BE HELD before the Honorable Prudence Carter Beatty in the Southern District of New York Bankruptcy Court, at One Bowling Green, New York, NY on **December 12, 2006 at 11:00 a.m.** (prevailing Eastern Time).

IN THE ABSENCE OF ANY TIMELY FILED OBJECTIONS, THE COURT MAY GRANT THE MOTION WITHOUT FURTHER NOTICE.

Dated: November 17, 2006

ANTHONY H.N. SCHNELLING, TRUSTEE OF
THE IMPATH BANKRUPTCY LIQUIDATING
TRUST

By Counsel:

/s/ John J. Jerome _____

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Attorneys for Anthony H.N. Schnelling, Trustee of the Impath Bankruptcy Liquidating Trust

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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

**MOTION OF TRUSTEE OF THE IMPATH BANKRUPTCY LIQUIDATING TRUST
FOR ORDER TO APPROVE SETTLEMENT OF LITIGATION CLAIMS AGAINST
THE DEBTORS' FORMER ACCOUNTANTS AND TO SET RECORD DATE FOR
DISTRIBUTION OF NET LITIGATION PROCEEDS**

Anthony H.N. Schnelling, Trustee (the "Trustee") of the Impath Bankruptcy Liquidating Trust (the "Liquidating Trust") established under the Debtors' Third Amended Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code, as modified (the "Plan"), by his undersigned counsel and pursuant to Plan, hereby moves for the entry of an Order approving the Trustee's settlement of the pending litigation against Debtors' former accountants (the "Accountants"), and establishing record date for distribution of net litigation proceeds, on the following grounds:

DKT. NO. 1496
DT. FILED 11/17/06

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and Articles XI (g), (k) and (p) of the Plan. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

2. On September 28, 2003, Impath Inc. (“Impath”) and its subsidiary debtor entities (together, the “Debtors”) each filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Debtors operated their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. During the course of these proceedings, substantially all of the Debtors’ assets were sold and the Plan was filed. On March 22, 2005, the Court entered an Order confirming the Plan. The Plan became effective on July 22, 2005 (the “Effective Date”), and on the Effective Date, the Debtors’ estates were substantively consolidated and are currently being liquidated under the supervision of the Trustee.

4. In accordance with the Plan, all of the Debtors’ creditors holding allowed claims have been paid in full. Only a few disputed unsecured and administrative claims remain unresolved. The Trustee has reserved sufficient funds to pay such disputed claims, in full, in the event that they are allowed. On or about August 22, 2005, the Trustee made an initial cash distribution of \$42,957,866, or \$2.55 per unit, to the holders of record of Class A Beneficial Interests (Class 5 under the Plan).

5. The Liquidating Trust was established under Section 6.5(a) of the Plan solely for the benefit of Impath’s shareholders, including former shareholders who were parties to a class action settlement (the “Former Shareholders”) between Impath and certain non-debtors prior to the Petition Date (the “Class Action Settlement”).

Assignment of Litigation Claims

6. Prior to the filing of the Debtors' Chapter 11 proceedings, the Debtors had issued fraudulent financial statements while the Accountants were providing auditing and other services to the Debtors (the "Services").

7. Pursuant to the Plan and the Class Action Settlement, the claims of the Former Shareholders against the Accountants and the claims of the Debtors against the Accountants arising out of the Services (collectively, the "Litigation Claims") were assigned to the Trustee under the Liquidating Trust.

8. The Trustee was appointed under the Plan to administer the Liquidating Trust, and has the authority to pursue the Debtors' and the Former Shareholders' claims against the Accountants. The Plan provides that the Trustee has the sole authority to abandon, settle or release any such claims "upon Bankruptcy Court approval after notice and a hearing." Plan at § 9.3.

9. Under the Plan, the Former Shareholders (Class 6 under the Plan) are to receive 22% of any net proceeds recovered by the Trustee on account of such claims and the former equity holders are to receive the balance. Plan at §§ 1.16, 4.5, 4.6. The phrase "after notice and a hearing" as used in the Plan has the same meaning as the phrase is given in Section 102 of the Bankruptcy Code; namely, that a hearing is not required if not requested by a party in interest.¹

¹ Section 102(1) provides that:

"after notice and a hearing," or a similar phrase –

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act.

11 U.S.C. § 102(1).

Pending Litigation

10. On July 27, 2005, the Trustee filed a Complaint (the "Complaint") in the U.S. District Court for the District of New Jersey (the "New Jersey Court") (Case No. 05-cv-03756-DMC-MF) against the Accountants for unspecified damages arising out of the assigned Litigation Claims alleging securities law and common law fraud, negligence, and breach of contract (the "Pending Litigation").

11. The Accountants subsequently filed a motion to dismiss the Complaint on standing and other grounds. The New Jersey Court denied the motion to dismiss in its entirety.

12. Thereafter, on February 8, 2006, the Accountants 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 New Jersey Court denied that motion.

13. In its subsequent Answer to the Complaint, the Accountants have asserted that senior executives of Impath were aware of and authorized the fraud to benefit the company and has pled 23 affirmative defenses. The Accountants also denied that they had knowledge of the accounting irregularities as a defense to the federal securities law claims asserted by the Trustee.

14. Thereafter, the Trustee's counsel, informally, and then formally in compliance with a Discovery Order entered on April 4, 2006, produced more than one million pages of electronic and paper documents to counsel for the Accountants and undertook to review more than 90,000 pages of documents produced to the Trustee by counsel for the Accountants. Both the Trustee and the Accountants have retained damage and accounting experts who have been consulted in connection with the litigation. Depositions of witnesses have not yet begun and it is anticipated that continued discovery and a full trial of the factual and legal issues involved would

likely take more than a year. For the past several months the parties have engaged in negotiations to resolve the suit to save costs and the continuing delay of litigation.

The Proposed Settlement

15. After extensive settlement negotiations, the Trustee and the Accountants have reached an agreement to settle the Pending Litigation. Under the terms of the proposed settlement, subject to bankruptcy court approval prior to December 29, 2006, (i) the Accountants have agreed to pay the Trustee \$23,150,000 in exchange for which the Trustee has agreed to dismiss the Pending Litigation, with prejudice; and (ii) the parties also have agreed to exchange mutual releases with each other with respect to the Litigation Claims, which include all claims relating to the Accountant's role as Debtors' prepetition accountants (the "Settlement").

Grounds for Relief

16. The Trustee respectfully requests that this Court enter an Order approving the Settlement with the Accountants.

17. Because this matter arises after the Effective Date of the Plan, Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 9019 does not specifically govern the requirements for Court approval of the Settlement. Nevertheless, looking to Bankruptcy Rule 9019 as a guide in considering this Motion, the proposed Settlement with the Accountants more than satisfies the standard for Court approval of a settlement under that Rule.

18. In deciding whether to approve a settlement under Bankruptcy Rule 9019, the Court must determine whether the settlement is in the best interest of the estate. In re Adelpia Commc'ns Corp., 327 B.R. 143, 158 (Bankr. S.D.N.Y. 2005) ("Adelpia") (citation omitted). To be in the best interest of the estate, the settlement must be "fair and equitable," which determination is based on "the probabilities of ultimate success should the claim be litigated."

Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424 (1968).

19. The settlement does not, however, need to be the best possible result; instead, it must simply “fall within the reasonable range of litigation possibilities.” Adelphia, 327 B.R. at 159 (citation omitted). In considering the fairness of a proposed settlement, the Court need only be “apprised of those facts that are necessary to enable it to evaluate the settlement and to make a considered and independent judgment about the settlement.” Id. (citations omitted).

**The Settlement is Fair and Equitable
and in the Best Interest of the Trust Beneficiaries**

20. The Trustee presently estimates that, after unpaid fees and expenses and other adjustments, the 22% of net proceeds distributable to the Former Shareholders (Class 6 under the Plan) should total approximately \$4,480,000.00, and the balance should result in a distribution to holders of Class A Beneficial Interests (Class 5 under the Plan) of approximately \$17,000,000 or slightly more than \$1 per unit, for a total of \$21, 480,000 for both classes. Provided the Settlement is approved by the Court and absent an appeal of the Settlement, the Trustee intends to make his distributions on account of the Settlement on or before January 10, 2007.

21. The terms of the Settlement are fair and equitable. The claims and issues involved in the Pending Litigation are complex, and the outcome of the Pending Litigation is far from certain. Although the Trustee believes that the claims against the Accountants are meritorious, the Pending Litigation is inherently risky and costly. Certain former senior officers of Impath, some of whom were also directors, have pled guilty to or been convicted of certain crimes relating to the accounting irregularities which are the subject of the Litigation Claims and the Pending Litigation. The Accountants have asserted, in their defense, that the conduct of these individuals should be imputed to the Trustee as successor to the Debtors and thereby bar his

claims against the Accountants. The Accountants have also denied that they had knowledge of the accounting irregularities as a defense to the federal securities law claims asserted by the Trustee in respect of the assigned claims of the Former Shareholders. Even if the Trustee were to be successful in prosecuting the suit, the amount of any recovery, net of litigation expense, is also uncertain. Given these and other uncertainties, and the substantial cost and delay of further litigation, the Trustee believes that the Settlement is fair and reasonable and in the best interests of the Liquidating Trust and those parties holding beneficial interests in the Trust.

The Lead Plaintiffs Support Approval of the Proposed Settlement

22. Consistent with the Plan and the Liquidating Trust Agreement, the Trustee has consulted with counsel for the “Lead Plaintiffs,” the attorneys who represent the Former Shareholders, concerning the proposed Settlement prior to filing this Motion. The Lead Plaintiffs agree with the Trustee that the proposed Settlement is fair, reasonable and in the best interest of the Former Shareholders, who will share in the recovery under the proposed Settlement pursuant to the terms of the Plan.

Record Date

23. The Trustee requests that the Court set close of business on December 29, 2006 as the record date for determining those holders of certificates of Class A Beneficial Interests entitled to distribution from the Settlement (the “Record Date”).

Waiver of Memorandum

24. The Trustee submits that the relevant legal authorities are set forth herein and that the requirement pursuant to Local Rule 9013-1 that the Trustee file a memorandum of law in support of this Motion is satisfied.

Adequacy of Notice

25. This Motion, with a copy of a Notice summarizing this Motion (the "Notice"), has been served on: (1) the U.S. Trustee; (2) counsel for the Lead Plaintiffs; (3) all of the holders of beneficial interests in the Liquidating Trust; and (4) all other parties in interest entitled to receive notice in this case under Bankruptcy Rule 2002 or otherwise. A copy of the Notice is attached hereto as Exhibit 1. The Trustee submits that no other or further notice is necessary.

26. No previous request for relief sought herein has been made to this Court.

WHEREFORE, the Trustee respectfully requests the Court to enter an Order:

(1) approving the proposed Settlement of the Pending Litigation; (2) authorizing the Trustee to take all actions necessary to consummate the Settlement with the Accountants; (3) setting close of business on December 29, 2006 as the Record Date for establishing those holders of Class A Beneficial Interests entitled to distribution from the Settlement; and (4) granting the Trustee such other and further relief as the nature of this cause may require.

Dated: November 17, 2006

ANTHONY H.N. SCHNELLING, TRUSTEE OF
THE IMPATH BANKRUPTCY LIQUIDATING
TRUST

By Counsel:

/s/ John J. Jerome

John J. Jerome (JJ-2413)

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
In re : Chapter 11
 :
IMPATH INC., *et al.*, : Case No. 03-16113 (PCB)
 : (Jointly Administered)
 :
Debtors. :
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**ORDER GRANTING MOTION OF TRUSTEE OF THE IMPATH BANKRUPTCY
LIQUIDATING TRUST TO APPROVE SETTLEMENT OF LITIGATION CLAIMS
AGAINST DEBTORS' FORMER ACCOUNTANTS AND TO SET RECORD DATE FOR
DISTRIBUTION OF NET LITIGATION PROCEEDS**

Upon consideration of the Motion of Trustee of the Impath Bankruptcy Liquidating Trust to Approve Settlement of Litigation Claims against Debtors' Former Accountants and to Set Record Date For Distribution of Net Litigation Proceeds (the "Motion");¹ and the Court finding that the Settlement is fair and equitable and in the best interests of the Debtors' estates and all holders of beneficial interests in the Liquidating Trust established pursuant to the Debtors' confirmed Third Amended Joint Plan of Liquidation under Chapter 11 of the Bankruptcy Code, as modified (the "Plan"); and the Court having jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and Article XI(g), (k) and (p) of the Plan; and consideration of the Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion have been given to: (1) the U.S. Trustee; (2) counsel for the Lead Plaintiffs; (3) all of the holders of beneficial interests in the Liquidating Trust; and (4) all other parties in interest entitled to receive notice under Bankruptcy Rule 2002 or otherwise, and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is hereby,

¹ All capitalized terms not otherwise defined in this Order have the meaning given to them in the Motion.

ORDERED that the Motion is GRANTED; and it is further

ORDERED that the terms of the Settlement are APPROVED; and it is further

ORDERED that the Trustee is authorized to take all actions necessary or desirable to consummate the Settlement; and it is further

ORDERED that close of business on December 29, 2006 is the Record Date for establishing those holders of Class A Beneficial Interests entitled to distribution from the Settlement.

Dated: December ____, 2006

United States Bankruptcy Judge

File a Motion:03-16113-pcb Impath Inc.

U.S. Bankruptcy Court
Southern District of New York

Notice of Electronic Filing

The following transaction was received from Kuhns, Joyce A. entered on 11/17/2006 at 10:18 AM and filed on 11/17/2006

Case Name: Impath Inc.
Case Number: 03-16113-pcb
Document Number: 1496

Docket Text:

Motion to Approve [*Motion of Trustee of the Impath Bankruptcy Liquidating Trust for Order to Approve Settlement of Litigation Claims Against the Debtors' Former Accountants and to Set Record Date for Distribution of Net Litigation Proceeds*] filed by Joyce A. Kuhns on behalf of Anthony H.N. Schelling, Liquidating Trustee of the Impath Bankruptcy Liquidating Trust. with hearing to be held on 12/12/2007 at 11:00 AM at Courtroom 701 (PCB) Responses due by 12/7/2006, (Attachments: # (1) Pleading Notice# (2) Pleading Proposed Form of Order) (Kuhns, Joyce)

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

Document description:Main Document**Original filename:**U:\03-16113\906192.35\Motion.pdf**Electronic document Stamp:**

[STAMP NYSBStamp_ID=842906028 [Date=11/17/2006] [FileNumber=5515062-0]
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Document description:Pleading Notice**Original filename:**U:\03-16113\906192.35\Notice.pdf**Electronic document Stamp:**

[STAMP NYSBStamp_ID=842906028 [Date=11/17/2006] [FileNumber=5515062-1]
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Document description:Pleading Proposed Form of Order**Original filename:**U:\03-16113\906192.35\Order.pdf**Electronic document Stamp:**

[STAMP NYSBStamp_ID=842906028 [Date=11/17/2006] [FileNumber=5515062-2]
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cd421bdd2242326e6fd3a479fccacf5fbc2e2fde7be0c3d472dd0213b2d0]]

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

Michael A. Axel michael_axel@keybank.com