

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re	:	Chapter 11
	:	Case No. 09- <u>12072</u> ()
Isolagen, Inc., <i>et al.</i> , ¹	:	
Debtors.	:	Joint Administration Pending

**APPLICATION OF DEBTORS PURSUANT TO 11 U.S.C. § 327(a) FOR AUTHORITY
TO EMPLOY AND RETAIN CIARDI CIARDI & ASTIN AS COUNSEL FOR THE
DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

Isolagen, Inc. and Isolagen Technologies, Inc., the above-captioned debtors and debtors in possession (collectively, the “Debtors”), hereby apply (the “Application”) pursuant to section 327(a) of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2014(a) and 2016(b) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for authority to employ and retain Ciardi Ciardi & Astin (“Ciardi”) as counsel for the Debtors *nunc pro tunc* to the Petition Date (defined herein), and in support hereof, respectfully represent as follows:

Introduction

1. On the date herein (the “Petition Date”), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code.
2. The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.
3. This Court has jurisdiction to hear the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

¹ The Debtors are Isolagen, Inc., tax identification number **-***6974, and Isolagen Technologies, Inc., tax identification number **-***6974.

4. The statutory basis for the relief requested herein is section 327(a) of the Bankruptcy Code.

Background

5. The factual background of the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Declaration of Declan Daly in Support of Debtors' Chapter 11 Petitions and First Day Relief (the "First Day Declaration"), filed concurrently herewith and fully incorporated herein by reference.²

Relief Requested

6. By this Application, the Debtors seeks to employ and retain Ciardi pursuant to section 327(a) of the Bankruptcy Code as their counsel in connection with the commencement and prosecution of the above-captioned bankruptcy cases, effective as of the Petition Date.

Basis for Relief

7. The Debtors seek to retain Ciardi as its counsel because of Ciardi's extensive general experience and knowledge, and in particular, its recognized expertise in the field of debtors' and creditors' rights and business reorganizations under chapter 11 of the Bankruptcy Code, its expertise, experience and knowledge practicing before the United States Bankruptcy Court for the District of Delaware, its proximity to this Court, its ability to respond quickly to emergency hearings and other emergency matters in this Court, and because Ciardi's appearance before this Court for the applications, motions and other matters in these chapter 11 cases will be efficient and cost effective for the Debtors' estates. The Debtors believe that Ciardi is both well-qualified and uniquely able to represent it in these cases in a most efficient and timely manner.

² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

8. The services of Ciardi are necessary to enable the Debtors to execute faithfully their duties as debtors and debtors in possession. Subject to Court approval, the professional services that Ciardi will be required to render, shall include (but shall not be limited to):

- (a) taking all necessary action to protect and preserve the estates of the Debtors, including the prosecution of actions on the Debtors' behalf, the defense of any actions commenced against the Debtors, the negotiation of disputes in which the Debtors are involved, and the preparation of objections to claims filed against the Debtors' estates;
- (b) providing legal advice with respect to the Debtors' powers and duties as debtors in possession in the continued operation of its businesses and management of its properties;
- (c) negotiating, preparing and pursuing confirmation of a plan and approval of a disclosure statement;
- (d) preparing on behalf of the Debtors, as debtors in possession, necessary motions, applications, answers, orders, reports, and other legal papers in connection with the administration of the Debtors' estates;
- (e) appearing in Court and to protect the interest of the Debtors before the Court;
- (f) assisting with any disposition of the Debtors' assets, by sale or otherwise; and
- (g) performing all other legal services in connection with these chapter 11 cases as may reasonably be required.

9. It is necessary that the Debtors employ attorneys to render the foregoing professional services. Ciardi has stated its desire and willingness to act in this case and render the necessary professional services as attorneys for the Debtors.

10. Prior to the Petition Date, Ciardi was retained by the Debtors to provide bankruptcy advice, including assisting in the preparation of the requisite petitions, pleadings, exhibits, lists and schedules in connection with the commencement of these cases. The Debtors believe Ciardi has the necessary background to deal effectively and efficiently with many of the potential legal issues and problems that may arise in the context of these cases. The Debtors

believe that Ciardi is both well-qualified and uniquely able to represent the Debtors in a most efficient and timely manner.

11. Representation for the purposes delineated above is in accordance with section 327(a) of the Bankruptcy Code. Section 327(a) of the Bankruptcy Code provides for the appointment of counsel where the proposed counsel does not possess any interest materially adverse to the Debtors with regard to the matters that will be handled by counsel and where counsel are disinterested persons.

12. To the best of the Debtors' knowledge, and except as disclosed herein and in the annexed declaration of Daniel K. Astin (the "Astin Declaration"), Ciardi does not hold or represent any interest or connection adverse to the Debtors, their estates, their creditors, any other party in interest, or the Debtors' respective professionals. Ciardi is a "disinterested person" as defined in the Bankruptcy Code.

13. Accordingly, the Debtors submit that Ciardi's representation of the Debtors is permissible under section 327(a) of the Bankruptcy Code and is in the best interest of all creditors of the estates.

Waiver of Interim Fee Application Requirements

14. The Debtors intend to compensate Ciardi by payment of a flat fee of \$200,000 for post-petition services. This fee will be paid in advance. The Debtors also intend to reimburse Ciardi for the expenses Ciardi will incur in their representation of the Debtors. The Debtors understand that Ciardi is seeking the waiver of requirement to file interim fee applications, and that Ciardi intends to apply to the Court for allowance of compensation and reimbursement of expenses through the filing of a final fee application in accordance with applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the

Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), and Orders of this Court.

15. Because Ciardi's flat fee is fully disclosed herein, further interim fee applications should not be required. Ciardi acknowledges that the payment of professional fees and expenses may be subject to disgorgement or modification, if warranted, under section 329 of the Bankruptcy Code. Therefore, so that the Court may determine if Ciardi's fees are reasonable, at the conclusion of its representation of the Debtors, Ciardi will file a final application seeking approval of payment of its compensation and setting forth all fees and expenses incurred in these cases pursuant to the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The Debtors therefore request: (a) waiver of any requirement to file an interim fee application, and (b) approval of the payment of \$200,000 to Ciardi in advance subject to the approval of a final fee application.

16. The Debtors submit that the payment of a flat fee to Ciardi is reasonable given the short duration contemplated of these cases. The Debtors intend to confirm a plan of reorganization with roughly the same duration permitted for the filing of a first fee application in these cases. Such a proposal will reduce the burden to the estates of the time and resources directed to the preparation and filing of interim fee applications or a motion to establish interim compensation procedures. A flat fee payment will also ensure that the estates will not incur substantial professional fees and give the Debtors more certainty in determining the resources available to them for reorganization. The Debtors believe that the foregoing compensation structure is reasonable and should be approved by the Court at this time.

Retainer

17. Prior to the filing of the bankruptcy petition, the Debtors sent a check in the amount of \$52,078.00 (the “Retainer”) to Ciardi for a flat fee pre-payment of Ciardi’s fees in expenses incurred in advising the Debtors regarding the filing for protection under the Bankruptcy Code and preparing the Debtors’ bankruptcy petitions and First Day Motions.

Notice

18. Notice of this Application has been provided to the Office of the United States Trustee for the District of Delaware, the Debtors’ 20 largest creditors, and all parties requesting notices pursuant to Bankruptcy Rule 2002. The Debtors submits that no other or further notice need be provided.

Conclusion

WHEREFORE, the Debtors respectfully request the relief requested herein and such other and further relief as is just and proper.

June 15, 2009

ISOLAGEN, INC. and ISOLAGEN
TECHNOLOGIES, INC.

Declan Daly

Declan Daly, CEO