

632, 2010 WL 1435161 (N.D. Tex., April 9, 2010). The court's opinion is located on the E-Ferol class action website, www.eferolclassaction.com, and on the PACER system, www.pacer.gov.

On June 18, 2010, the District Court entered final judgment, subject to further litigation as may be required in connection with three non-participating insurers and implementation of the terms and conditions described in the Settlement Agreement (doc. no. 306-2). On that same day, class member Lawrence Long, Jr. filed a Notice of Appeal with the U.S. Court of Appeals for the Fifth Circuit, located in New Orleans, Louisiana. During the time permitted for giving notice of appeal, no other class member perfected an appeal.

As the preparation of the appeal was in progress, negotiation took place between class counsel, defense counsel, counsel for appealing class member, Lawrence Long, and Appellate Conference Attorney, Vikram Chandhok, who was appointed by the Appellate Conference Program, a program funded and implemented by the Fifth Circuit Court of Appeals, the purpose of which is to explore with the parties the possibility of settlement and to facilitate settlement discussion.

On September 8, 2010, the parties, working through the Appellate Conference Attorney, reached a tentative agreement. On September 28th, the Memorandum of Agreement was executed by all parties and submitted to Chief Judge Fitzwater for preliminary approval on September 29th. The parties executed a final settlement agreement on October 14, 2010.

Proposed Settlement of Lawrence Long's Appeal

The parties, including the E-Ferol class representatives, class counsel, defendants, Lawrence Long, and Mr. Long's attorneys, have executed a settlement agreement ("Proposed Settlement") that, if approved by the District Court, will result in the immediate termination of Mr. Long's appeal to the Fifth Circuit Court of Appeals from the District Court's April 9, 2010 Memorandum Opinion and June 18, 2010 Judgment. The Proposed Settlement will allow the E-Ferol class action to proceed with the distribution of the initial settlement proceeds as set out in the Settlement Agreement (doc. no. 306-2), which requires the District Court to approve each distribution pursuant to the agreement and subject to the resolution of any Medicare/Medicaid reimbursement issues. The key terms of this Proposed Settlement are as follows:

1. Mr. Long will, on his own behalf and in his capacities as a representative of the Estate of Christina M. Long and the sole heir of his late wife, Christene Long, withdraw his Notice of Appeal and be bound by the Final Judgment entered by the District Court on June 18, 2010, which Judgment approved the E-Ferol Class Settlement in *Victoria Klein, et al. v. O'Neal, Inc., f/k/a O'Neal Jones & Feldman Pharmaceuticals, et al.*, cause No. 7:03-cv-00102-D in the U.S. District Court for the Northern District of Texas, Wichita Falls Division.
2. Mr. Long will, on his own behalf and in his capacities as a representative of the Estate of Christina M. Long and the sole heir of his late wife, Christene Long, release and dismiss with prejudice any and all causes of action which he has, or in the future, or may have, with regard to the administration of E-Ferol to Christina M. Long, including but not limited to the following cases currently filed: *Lawrence V. Long, Jr. v. O'Neal, Inc.*, No.

2009 CV 02144, Court of Common Pleas of Montgomery County, Ohio; *Lawrence V. Long, Jr. v. O'Neal, Inc.*, No. 23632, In the Court of Appeals of Ohio, Second Appellate District, Montgomery County, Ohio; *Lawrence V. Long, Jr. v. CVS Caremark Corp.*, No. 5:09-cv-01392-SL, in the U.S. District Court for the Northern District of Ohio; *Klein, et al. v. O'Neal Inc., et al.*, No. 3:07-mc-00010-TMR-SLO, in the U.S. District Court for the Southern District of Ohio; *Klein, et al. v. O'Neal, et al.*, No. 1:09-mc-00066-SSB-SLO, in the U.S. District Court for the Southern District of Ohio; *Klein, et al. v. O'Neal, Inc., et al.*, No. 7:03-cv-00102-D, in the U.S. District Court for the Northern District of Texas and *Klein, et al. v. O'Neal, Inc., et al.*, No. 10-10631, in the U.S. Court of Appeals for the Fifth Circuit.

3. Class counsel will pay to Lawrence Long's attorney, Graydon Head & Ritchey LLP, from the fee awarded to class counsel by the District Court, the sum of \$360,000.00, and certain of the defendants' insurance carriers ("Certain Insurers") will pay to Graydon Head & Ritchey LLP the sum of \$280,000, for a total of \$640,000.00 for attorney's fees and costs incurred by Mr. Long in retaining Graydon Head & Ritchey LLP to represent his interests in connection with the administration of E-Ferol to Christina M. Long, and the E-Ferol class action settlement that has been approved by the District Court. **The \$280,000.00 payment to Graydon Head & Ritchey LLP by Certain Insurers of the defendants will not diminish the settlement proceeds to be paid to E-Ferol class members as set out in Exhibit 7 to the Settlement Agreement and Release (doc. no. 306-2).** The \$640,000.00 in payments to Graydon Head & Ritchey LLP will not be made before Mr. Long qualifies for and receives an initial distribution of settlement proceeds from the E-Ferol class settlement. No other expenses for legal services provided to Mr. Long will be paid by the E-Ferol class, class counsel, the defendants, or the defendants' insurers.
4. Mr. Long, on his own behalf and in his capacities as a representative of the Estate of Christina M. Long and the sole heir of his late wife, Christene Long, will be bound by all of the terms and conditions of the E-Ferol class Settlement Agreement (doc. no. 306-2) which has been approved by Chief Judge Sidney A. Fitzwater in his Memorandum Opinion of April 9, 2010 (doc. no. 426). Mr. Long will cooperate fully with all terms and conditions of the E-Ferol class Settlement Agreement, including the payment of all of the attorneys' fees and expenses as required by that agreement and the Memorandum Opinion and Judgment approving same, and Mr. Long will execute the required releases and supply the information regarding Medicare/Medicaid reimbursement in connection with the E-Ferol class settlement.
5. Mr. Long, on his own behalf and in his capacities as a representative of the Estate of Christina M. Long and the sole heir of his late wife, Christene Long, will remain a member of the E-Ferol class and will be entitled to the same benefits afforded other class members in his category with regard to any future recovery in coverage actions against certain liability insurers, as described in the E-Ferol class Settlement Agreement, except that Mr. Long agrees to waive all objections and appeals with regard to any future settlement of such coverage actions and award of attorneys' fees and costs; provided, however, that if class counsel request an attorneys' fee in excess of the percentage awarded by the District Court in its Memorandum Opinion (doc. no. 426), Mr. Long does

not waive his right to object to the amount of the attorneys' fee before the District Court, but would waive all appeals of decisions by the District Court relating to the amount of the settlement, the expenses of class counsel, the fee awarded to class counsel, or any other matter involving additional recovery in the coverage actions.

6. In the event that Mr. Long retains counsel other than Graydon Head & Ritchey LLP, or any other advisors in connection with the Klein action or any other matter relating to the administration of E-Ferol to Christina M. Long, Mr. Long is solely responsible for all fees, costs, and expenses incurred by that counsel or other advisor, including, but not limited to, Mr. Long's present counsel, Cheryl Washington, 130 W. Second St., Suite 450, Dayton, Ohio 45402.
7. Mr. Long will take all actions necessary to complete the probate of Christina M. Long's estate, and to open a probate estate for his late spouse Christene Long and to complete the probate of Christene Long's estate, and establish Long's sole and exclusive right to the distribution of funds allocated to Christina M. Long's claims in the E-Ferol class action.
8. Following notice to the E-Ferol class, if any class member objects to the settlement with Lawrence Long, Jr., defendants and class counsel shall each have the option to void the settlement with Lawrence Long, Jr. in its entirety, or to proceed with seeking approval of the settlement with Lawrence Long, Jr. either without modification or with modifications that are agreed upon by defendants, Certain Insurers, class counsel, Mr. Long, and his counsel.
9. The settlement with Lawrence Long, Jr. must be approved by the U.S. District Court for the Northern District of Texas, Wichita Falls division, presiding over *Victoria Klein, et al. v. O'Neal, Inc., f/k/a O'Neal Jones & Feldman Pharmaceuticals, et. al.*, cause No. 7:03-cv-00102-D.

As described above, the settlement with Lawrence Long does not result in his receiving any monies over and above those awarded to other class members assigned to Category 1. The payment to Lawrence Long's attorneys at Graydon Head & Ritchey LLP for their services in representing Mr. Long, will be made from the attorneys' fees awarded to class counsel and from Certain Insurers. **No funds payable to Mr. Long's attorney will be paid from the settlement funds or from any class member's award.** By Mr. Long withdrawing his Notice of Appeal, subject to the approval of Chief Judge Fitzwater, class members will be entitled to receive their initial distribution of the class action settlement proceeds, pursuant to the Settlement Agreement (doc. no. 306-2) (which requires court approval of each distribution and resolution of any Medicare/Medicaid reimbursement issues) and not have to risk the possibility that the class would not prevail in the appeal or will wait additional months or years for appeals to be concluded.

IF YOU AGREE WITH THE PROPOSED SETTLEMENT OF LAWRENCE LONG'S APPEAL, YOU NEED NOT TAKE ANY ACTION WHATSOEVER.

IF YOU OBJECT TO THIS PROPOSED SETTLEMENT, YOU MUST SUBMIT YOUR OBJECTION IN WRITING AND YOUR OBJECTION MUST BE RECEIVED BY THE CLERK OF THE COURT AT THE ADDRESS BELOW NO LATER THAN NOVEMBER 12, 2010, at 5:00 P.M. You must address your objection to the Clerk of this Court, U.S. Courthouse, 1000 Lamar St., Room 203, Wichita Falls, Texas 76301; and send a copy of your objection to lead counsel for the E-Ferol class, Art Brender, 600 8th Ave., Fort Worth, Texas 76104; and to lead counsel for the defendants, Barry Chasnoff, Akin, Gump, Strauss, Hauer, & Feld, LLP, 300 Convent St., Suite 1600, San Antonio, Texas 78205.

ANY OBJECTION TO THE SETTLEMENT BY A CLASS MEMBER COULD RESULT IN VOIDING THIS SETTLEMENT. (See Paragraph 8 above.)

If you object to this Proposed Settlement and you wish to appear in person to argue your objection or have an attorney appear on your behalf, either you or your attorney must, before the above deadline, submit a written notice of your intention to appear in person to the clerk of this court at the above address with a copy of your notice served on lead class counsel and lead defense counsel. Any oral presentation at the hearing will be limited to the issues raised and timely submitted in writing as set out above.

By not objecting to this Proposed Settlement, you will waive any right to object to the settlement with class member Lawrence Long, to appeal from the approval of the settlement with Mr. Long or to challenge any other matter related in any way to the settlement with Mr. Long.

IF YOU AGREE WITH THE PROPOSED SETTLEMENT OF LAWRENCE LONG'S APPEAL AND WANT THE SETTLEMENT AGREEMENT WITH THE DEFENDANTS (DOC. NO. 306-2) TO BE EFFECTIVE AS SOON AS POSSIBLE UNDER THE TERMS OF THAT AGREEMENT, YOU NEED NOT TAKE ANY ACTION.

QUESTIONS CONCERNING SETTLEMENT

DO NOT CONTACT THE COURT OR COURT CLERK WITH QUESTIONS ABOUT THE SETTLEMENT.

Any class member who has a question concerning the settlement should contact class counsel listed below, by telephone, e-mail, or facsimile.

E-FEROL CLASS COUNSEL

Lead Class Counsel Art Brender
Law Offices of Art Brender
600 Eighth Ave.
Fort Worth, Texas 76104
State Bar No. 02954500
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The hearing on any objection to the Proposed Settlement of Lawrence Long's appeal will be held on the 19th day of November, 2010, at 2:00 p.m., before the Hon. Sidney A. Fitzwater, Chief Judge, U.S. District Court for the Northern District of Texas, U.S. Courthouse, 1100 Commerce St., Room 1525, Dallas, Texas. The hearing will be held pursuant to the Federal Rules of Civil Procedure, Rule 23(e), and is for the purpose of determining whether the Proposed Settlement with Lawrence Long is fair, reasonable, and adequate to the E-Ferol class as a whole. **The court will not consider any other matter nor will the court reconsider any matter pertaining to the E-Ferol class action other than whether the terms and conditions of Lawrence Long's withdrawal of his appeal are fair, adequate, and reasonable, pursuant to Fed. R. Civ. P. 23(e).**

If the court approves the settlement, you will be contacted about the disbursement of settlement funds by class counsel once final judgment has been entered.

Signed on this the 19th day of October, 2010.

/s/Teena Timmons
Teena Timmons, Deputy in Charge
UNITED STATES DISTRICT COURT
for the Northern District of Texas
1000 Lamar St., Room 203
Wichita Falls, Texas 76301