

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT  
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA  
CIRCUIT CIVIL DIVISION

CASE NO. 11 001915 Div. J

PHANEZE BENJAMIN and )  
CARLA BENJAMIN, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
SUNSHINE STATE INSURANCE )  
COMPANY, )  
 )  
Defendant. )  
\_\_\_\_\_ )

**ORDER DECLARING NEUTRAL EVALUATION STATUTE UNCONSTITUTIONAL  
AND DENYING STAY OF CASE**

Upon consideration of Defendant's Motions to Compel Neutral Evaluation, and to Stay of case; and for Protective Order as to Plaintiffs' Discovery; and upon consideration of Plaintiffs' objections to Neutral Evaluation and constitutional objection to the application of Fla. Stat. §627.7074; the Court having heard argument of counsel at hearing on June 23, 2011, having reviewed the file, and being otherwise advised in the premises, it is,

ORDERED AND ADJUDGED as follows:

1. Plaintiffs' objection that the original version of Fla. Stat. 627.7074 (enacted in 2006) is unconstitutional is GRANTED for the following reasons:
  - a) The Court finds that the statute is unconstitutional because it permits the Florida Department of Financial Services, an agency of the Executive Branch, to select and determine who will serve as a Neutral Evaluator for claims in

litigation regardless of whether the Neutral Evaluator is qualified to render an opinion on the issues presented as part of the neutral evaluation.

- b) Further, the Neutral Evaluator's opinions and written recommendations shall be admissible at a later civil trial as to insurance coverage issues without first permitting the Court to determine whether the designated Neutral Evaluator is qualified to render such opinions under Section 90.702 of the Florida Evidence Code or that the report and opinions are admissible in the first instance.
2. Accordingly, Defendant's Motion to Compel Neutral Evaluation and its Motion to stay this action pending completion of Neutral Evaluation is DENIED.
  3. The Plaintiffs' objection that the Defendant waived the right to file a request for neutral evaluation is overruled.
  4. The Court makes no ruling as to Plaintiffs' remaining objections to the Neutral Evaluation statute, or whether it may be applied retroactively.
  5. Further, the Court makes no ruling as to Defendant's Motion to Dismiss other than to permit Plaintiffs' discovery to proceed without stay, any issues raised by Defendant's Motion to Dismiss are reserved.
  6. Defendant shall serve its responses to Plaintiffs' interrogatories and request for production within 30 days.

DONE AND ORDERED in Chambers in Tampa, Hillsborough County, Florida, this  
\_\_\_\_ day of June, 2011.

**ORIGINAL SIGNED**

JUN 29 2011

**JAMES D. ARNOLD**  
**CIRCUIT JUDGE**

\_\_\_\_\_  
Honorable James Arnold  
Circuit Court Judge

Copies furnished to:

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