

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

HECTOR PAZ,
Plaintiff,

Case: 11-CA-005431
Division: G

v.

FLORIDA INSURANCE GUARANTY
ASSOCIATION, INC.
Defendant.

**ORDER DECLARING NEUTRAL EVALUATION STATUTE UNCONSTITUTIONAL
DENYING STAY OF CASE AND GRANTING PLAINTIFF'S MOTION
FOR PROTECTIVE ORDER PREVENTING NEUTRAL EVALUTION**

THIS CAUSE came before the Court for hearing on June 29, 2011 regarding the Defendant's "Motion to Stay Litigation and Submit Matter to Neutral Evaluation Program" and the Plaintiff's objection and "Motion for Protective Order Preventing Neutral Evaluation." Having heard the argument of counsel, reviewed the file and memoranda, and being otherwise fully advised in the premises, it is:

ORDERED AND ADJUDGED:

1. Plaintiff's objection that the original version of Florida Statutes § 627.7074 (enacted in 2006) is unconstitutional is **GRANTED** for the following reasons:
 - a. The statute 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 civil litigation claims. This individual may be selected regardless of whether he or she is qualified to render an expert opinion on the issues presented.
 - b. The mandated admissibility of the Neutral Evaluator's opinions and written recommendations contradicts Florida Evidence Code (Florida Statute § 90.702),



which empowers the Court to determine whether a witness is qualified to render an expert opinion. It therefore encroaches upon the judiciary's function to make legal determination as to the sufficiency of expert testimony.

2. Plaintiff's "Motion for Protective Order Preventing Neutral Evaluation" is **GRANTED**.
3. Defendant's "Motion to Stay Litigation and Submit Matter to Neutral Evaluation Program" is **DENIED**.
4. The Court is making no ruling as to the Plaintiff's remaining objections.

DONE AND ORDERED in chambers, Hillsborough County, Tampa, Florida, July 14, 2011.

ORIGINAL SIGNED
JUL 14 2011
MARTHA J. COOK
CIRCUIT JUDGE

Martha J. Cook
CIRCUIT COURT JUDGE

Copies furnished to:

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