

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 0:20-cv-61007-SINGHAL/VALLE

SOUTH BROWARD HOSPITAL DISTRICT d/b/a  
MEMORIAL HEALTHCARE SYSTEM, on behalf of  
itself and all others similarly situated,

Plaintiff,

v.

ELAP SERVICES, LLC, a Pennsylvania limited  
liability company, and GROUP & PENSION  
ADMINISTRATORS, INC., a Texas corporation,

Defendants.

---

**ORDER**

**THIS CAUSE** came before the Court on the Plaintiff South Broward Hospital District's Motion for Reconsideration of the Court's Opinion and Order Granting Summary Judgment (DE [186]) (the "Motion").<sup>1</sup> Defendants filed a Response in Opposition (DE [190]) and Plaintiff filed a Reply in support of its Motion (DE [196]). A motion hearing was held on November 27, 2023. The Motion is now ripe for consideration.

**I. BACKGROUND**

On September 30, 2023, this Court granted summary judgment in favor of Defendants, ELAP Services, LLC ("ELAP") and Group & Pension Administrators, Inc. ("GPA"), on Plaintiff South Broward Hospital District's ("Memorial") claims under the Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") and the common law

---

<sup>1</sup> Plaintiff filed the Motion under seal at (DE [185]). This Order applies with equal force to the sealed and unsealed Motion.

theory of unjust enrichment. See (Order (DE [183])). On Plaintiff's FDUTPA claim, the Court agreed with Defendants that Plaintiff's claims failed to demonstrate consumer harm and warranted dismissal on that basis. See *id.* at 23. As for Memorial's unjust enrichment claim, the Court concluded that dismissal was proper where Plaintiff showed no direct conferral of benefits to Defendants. See *id.* at 26.

Plaintiff seeks reconsideration of this Court's decision only as to its FDUTPA claim. See (Mot. (DE [186])). According to Plaintiff, reconsideration is warranted for three reasons: first—a novel argument—that the plain text of the FDUTPA statute imposes no consumer-injury requirement; second, assuming a consumer-injury requirement exists (which Plaintiff now contests), Memorial meets the definition of consumer and has shown adequate injury; and third, regardless of Memorial's status as a consumer under FDUTPA, Plaintiff has offered sufficient evidence demonstrating that Memorial patients were injured or likely to be injured.

Plaintiff's Motion is well-written, and Plaintiff's counsel presented compelling oral argument. Nevertheless, Plaintiff has not raised issues of manifest error. Plaintiff merely invites this Court to interpret FDUTPA in a light more favorable to Memorial's claim, which this Court respectfully declines for the reasons discussed herein.

## II. LEGAL STANDARD

“Courts have distilled three major grounds justifying reconsideration: (1) an intervening change in controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or manifest injustice.” *Instituto de Prevision Militar v. Lehman Bros., Inc.*, 485 F. Supp. 2d 1340, 1342 (S.D. Fla. 2007) (quoting *Cover v. Wal-Mart Stores, Inc.*, 148 F.R.D. 294, 295 (M.D. Fla. 1993)). A motion for reconsideration cannot be used “to relitigate old matters, raise argument or present evidence that could have been raised

prior to the entry of judgment.” *Michael Linet, Inc. v. Village of Wellington*, 408 F.3d 757, 763 (11th Cir. 2005). Furthermore, “[i]t is an improper use of the motion to reconsider to ask the Court to rethink what the Court already thought through – rightly or wrongly.” *Z.K. Marine, Inc. v. M/V Archigetis*, 808 F. Supp. 1561, 1563 (S.D. Fla. 1992) (quoting *Above the Belt, Inc. v. Mel Bohannan Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). “A motion for reconsideration is ‘committed to the sound discretion of the district judge.’” *Garcon v. United Mut. of Omaha Ins. Co.*, 779 Fed. Appx. 595, 600 (11th Cir. 2019) (citations omitted).

### III. ANALYSIS

#### a. FDUTPA’s Consumer Harm Requirement

Plaintiff’s Motion argues, for the first time, that FDUTPA imposes no consumer harm requirement. In its Opposition to Defendants’ Motion for Summary Judgement, Plaintiff noted in no uncertain terms that “[n]on-consumers have standing to pursue FDUTPA claims, but *in all cases, the plaintiff must demonstrate ‘injury or detriment to consumers.’*” (Pl.’s Opp. (DE [155] at 8)) (quoting *Caribbean Cruise Line, Inc. v. Better Bus. Bur. Of Palm Beach Cnty., Inc.*, 169 So. 3d 164, 167 (Fla. 4th DCA 2015)) (emphasis added). Plaintiff now challenges the excerpted language from *Caribbean Cruise Line, Inc.*—the very authority it relied upon—as dicta. See (Mot. (DE [185] at 9)). Rather than following *Caribbean Cruise Line*, Plaintiff contends that this Court should consider “persuasive evidence that the highest state court would rule otherwise.” See *id.* at 9–10 (citing *Bravo v. United States*, 577 F.3d 1324, 1326 (11th Cir. 2009)). The “persuasive evidence” in this instance, according to Plaintiff, is the plain text of FDUTPA’s statute. See (Motion (DE [185] at 10)). Specifically, Plaintiff references the 1993 and 2001 FDUTPA amendments which replaced references to “consumers” with “persons,” and

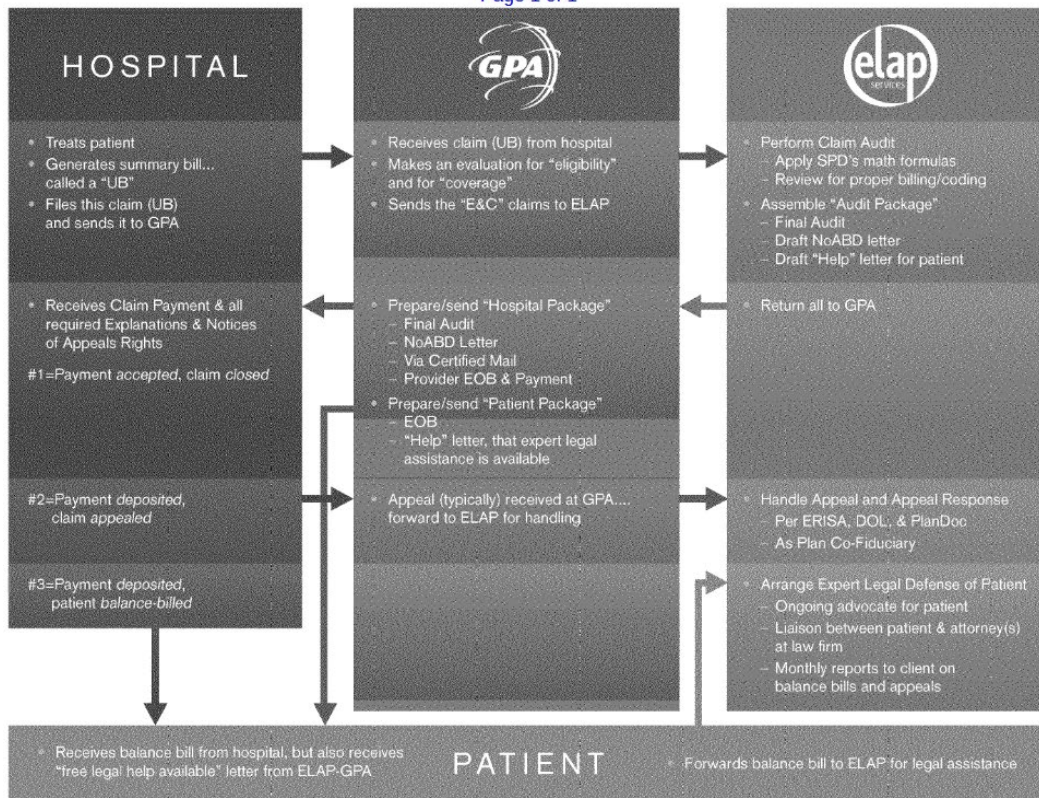
“made clear that there is no consumer injury requirement” in the statute. *Id.* *Caribbean Cruise Line*, Plaintiff maintains, effectively relies on stale precedent where it cites to a portion of the Florida Supreme Court’s decision in *PNR, Inc. v. Beacon Property Management, Inc.*, 842 So. 2d 773 (Fla. 2003) (“*PNR*”) which quotes from Florida Supreme Court cases that *predate* the 2001 FDUTPA amendments. See *id.* at 9–10. While creative, Plaintiff’s argument fails to identify any manifest error in this Court’s recognition of a consumer harm requirement within FDUTPA. “It is an improper use of the motion to reconsider to ask the Court to rethink what the Court already thought through – rightly or wrongly.” *Z.K. Marine, Inc.*, 808 F. Supp. at 1563 (quoting *Above the Belt, Inc. v. Mel Bohannon Roofing, Inc.*, 99 F.R.D. 99, 101 (E.D. Va. 1983)). This Court will not reconsider a requirement within FDUTPA that even Plaintiff conceded until the instant Motion.

b. Whether Memorial is a Consumer Under FDUTPA

Plaintiff’s second argument is that it meets the definition of “consumer” under FDUTPA and has demonstrated consumer harm through its own injury. See (Motion (DE [185] at 11–14)). In support, Plaintiff notes that “Consumer” under FDUTPA “means an individual; child, by and through its parent or legal guardian; business; firm; association; joint venture; partnership; estate; trust; syndicate; fiduciary; corporation; any commercial entity; however denominated; or any other group or combination.” See *id.* at 11–12 (citing Fla. Stat. § 501.203(7)). In its Order, this Court noted that Plaintiff’s interpretation of FDUTPA—that “virtually any injury resulting from an unfair or deceptive practice occurring in trade or commerce is a ‘consumer injury’”—is too expansive for this Court to endorse. See (Order (DE [183] at 20–21)). The Court further determined that record evidence cut against Plaintiff’s argument where Memorial’s corporate representative conceded that it

received no “benefit or anything of value” from Defendants. *Id.* at 21. The Order did not, as Plaintiff argues, impose a requirement that Plaintiff show it received any benefit or thing of value from Defendant to qualify as a consumer under FDUTPA. Rather, the Court identifies what it considers a central flaw in Plaintiff’s argument: Plaintiff is not an intended, or even third-party, beneficiary of Defendants’ services. To the contrary, self-funded health plans retain and consume services from Defendants. Take, for example, Plaintiff’s chart, which it included as an exhibit to its Opposition Statement of Material Facts and now cites to in the instant Motion:

Case 0:20-cv-61007-AHS Document 156-44 \*SEALED\* Entered on FLSD Docket 03/14/2023  
Page 1 of 1



CONFIDENTIAL

GPA0071023

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.