

Comcast Seeks Arbitration, Stay In Set-Top Box MDL

by Ben James

[Comcast](#) Corp. has taken a swipe at multidistrict litigation accusing the company of tying its premium cable services to its set-top box rentals, asking the court to compel six plaintiffs to arbitrate some of their claims and stay the rest of the MDL until that arbitration is complete.

Comcast filed its motion to compel arbitration and stay the action Wednesday in the U.S. District Court for the Eastern District of Pennsylvania, seeking to have six of the eight plaintiffs listed by name submit three claims of their Nov. 23 amended consolidated class action complaint to arbitration.

One of the claims at issue is for unjust enrichment, the second is brought under Alabama's unfair trade practices and consumer protection law, and the third invokes the Illinois Consumer Fraud and Deceptive Business Practices Act.

Comcast isn't seeking to have the three other claims in the suit — state and federal antitrust counts and a claim under California's Business and Professions Code — arbitrated.

Still, Comcast is asking to have the entire action stayed pending arbitration of three of the claims asserted by Kimberly Bryant, Leah Davis, Theodore William Frazier, Eric Holt, Sheila Hunt and Debra Koller.

Pursuant to an arbitration provision in a Comcast subscriber agreement — which the plaintiffs could have opted out of but didn't — the plaintiffs have to arbitrate all disputes related to their relationship with the company, and the claims in the three counts at issue are central to their contractual relationship with Comcast and thus are subject to arbitration, it argued.

The plaintiffs allege certain Comcast subscriber agreements include arbitration provisions that impose unconscionable terms on consumers, requiring them to arbitrate disputes with Comcast and waive their right to bring class claims both in court and in arbitration.

Both those waivers are meant to facilitate Comcast's anti-competitive conduct, the consolidated complaint says, adding that the plaintiffs who purportedly submitted to those waivers did so because they had no bargaining power. The arbitration provisions also contain a waiver of the right to a jury trial, the plaintiffs said.

All three of those waivers are unenforceable, according to the plaintiffs.

Twenty-one cases are consolidated in the set-top box MDL, and the consolidated complaint alleges a nationwide class as well as five subclasses, according to a memorandum of law supporting Comcast's motion to compel arbitration.

According to the plaintiffs, Comcast abuses its economic power by requiring customers who purchase premium cable to use and rent the set-top boxes, another product it distributes.

William Sweetnam, whose firm Sweetnam LLC is a member of the plaintiffs' steering

committee, said the fact that consumers could opt out of the arbitration provision was buried in the customer service agreement, and consumers weren't actually aware that they were giving up their right to sue Comcast or that they could have opted out.

"Generally speaking, these arbitration agreements are a raw deal for consumers, and that's why many large companies are dropping them," Sweetnam said Thursday.

Attorneys for Comcast and a company representative could not be immediately reached Thursday.

The MDL plaintiffs are represented by firms including [RodaNast](#) PC, Mellon Webster & Shelly and Bailey & Glasser LLP.

Comcast is represented in this matter by [Ballard Spahr](#) LLP, [White & Case](#) LLP and [Davis Polk](#) & Wardwell LLP.

The case is In re: Comcast Corp. Set-Top Cable Television Box Antitrust Litigation, case number 09-2034, in the U.S. District Court for the Eastern District of Pennsylvania.