

LEXSEE 2002 US DIST LEXIS 20584

**BARRY MENTZEL, as representative of the class, Plaintiffs, v. COMCAST CABLE COMMUNICATIONS, et al., Defendants.**

**Civil No. 02-71171**

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION**

*222 F. Supp. 2d 923; 2002 U.S. Dist. LEXIS 20584*

**October 18, 2002, Decided**

**October 18, 2002, Filed**

**DISPOSITION:** **[\*\*1]** Case REMANDED to the Oakland County Circuit Court pursuant to 28 U.S.C. § 1447(c).

**COUNSEL:** For Plaintiffs: Justin Haas, Gittleman, Paskel, Tashman & Walker, PC, Southfield, MI.

For Defendants: Thomas J. Tallerico, J. Adam Behrendt, Troy, MI.

For Defendants: Jaime A. Bianchi, White & Case, Miami, FL.

**JUDGES:** John Feikens, United States District Judge.

**OPINION BY:** John Feikens

**OPINION:**

**[\*923] ORDER OF REMAND**

Before me is plaintiff's motion to remand this case, removed to this court on a diversity jurisdiction basis. This is a class-action breach of contract claim coupled with a claim under the Michigan Consumer Protection Act. *MCL § 445.901 et seq.*

Plaintiff claims that there are 180,000 persons similarly situated to him and that in no event will there be any claim that exceeds \$ 160.

Plaintiff himself seeks reimbursement for intermittent cable-internet service at \$ 39.95 a month for

no more than four months and plaintiff's counsel stated on the record that there is no claim for consequential or punitive damages.

**[\*924]** On a motion to remand to state court, plaintiff must show "to a legal certainty that the claim is really for less than the jurisdictional amount to justify **[\*\*2]** dismissal." *St. Paul Mercury Indemnity v. Red Cab Co.*, 303 U.S. 283, 289, 82 L. Ed. 845, 58 S. Ct. 586 (1938). In a class action the claims of the class cannot be aggregated to meet the requisite jurisdictional floor (\$ 75,000). Michigan Consumer Protection Act. *MCL § 445.901 Zahn v. International Paper Co.*, 414 U.S. 291, 94 S. Ct. 505, 38 L. Ed. 2d. 511 (1974). Common sense dictates that plaintiff cannot recover more than \$ 160 per person or claim. Thus, it is a legal certainty that the amount in controversy does not exceed the \$ 75,000 required under 28 U.S.C. § 1332(a) and this court lacks subject matter jurisdiction over this case.

IT IS HEREBY ORDERED that this case be REMANDED to the Oakland County Circuit Court pursuant to 28 U.S.C. § 1447(c).

**IT IS SO ORDERED.**

JOHN FEIKENS

United States District Judge

Date: OCT 18 2002