No *Shepard’s*  Signal™As of: August 8, 2018 7:10 PM Z

# [***Baird v. PPG Indus.***](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:5N89-21W1-F04C-P1V7-00000-00&context=)

United States District Court for the Northern District of Alabama, Southern Division

April 7, 2017, Decided; April 7, 2017, Filed

Case No.: 2:16-cv-1977-MHH

**Reporter**

2017 U.S. Dist. LEXIS 53409 \*; 2017-1 Trade Cas. (CCH) P79,980; 2017 WL 1300222

EUGENE BAIRD and RHINO PRODUCTS, INC., Plaintiffs, v. PPG INDUSTRIES, INC., et al., Defendants.

**Core Terms**

plaintiffs', second amended complaint, ***anti trust*** law, federal law, state court, state-law, ***antitrust*** claim, federal claim, removal, allegations, business relationship, civil conspiracy, cause of action, interstate, commerce

**Counsel:** **[\*1]**For Eugene Baird, Rhino Products Inc, Plaintiffs: Alex R Hirschfield, LEAD ATTORNEY, THE HIRSCHFIELD LAW GROUP LCC, Birmingham, AL.

For PPG Industries Inc, PPG Architectual Finishes Inc, Chris Sides, Dave Hina, Defendants: Andrew J Sinor , Jr, LEAD ATTORNEY, HAND ARENDALL LLC, Birmingham, AL; Christine Harding Hart, LEAD ATTORNEY, HAND ARENDALL LLC, Mobile, AL.

**Judges:** MADELINE HUGHES HAIKALA, UNITED STATES DISTRICT JUDGE.

**Opinion by:** MADELINE HUGHES HAIKALA

**Opinion**

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on a motion to remand filed by the plaintiffs, Eugene Baird and Rhino Products, Inc. (Doc. 3). For the reasons discussed below, the Court grants the motion.

**I. PROCEDURAL HISTORY**

The plaintiffs instituted this action in the Circuit Court of Jefferson County, Alabama on May 4, 2015. (Doc. 1-1, pp. 4-18). In their original complaint, the plaintiffs asserted federal claims under RICO and the Sherman Act, state-law ***antitrust*** claims under [*Alabama Code §§ 6-5-60*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HMK1-6RDJ-7003-00000-00&context=) and [*8-10-1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPD1-6RDJ-710K-00000-00&context=), and state-law claims of civil conspiracy and tortious interference with business relations. (Doc. 1-1, pp. 11-16). The defendants, PPG Industries, Inc., PPG Architectural Finishes, Inc., Chris Sides, and Dave Hina, removed the case to this Court on June 5, 2015**[\*2]** on the basis of federal question jurisdiction. (Doc. 1-1, p. 24; Doc. 1, Case No. 2:15-cv-00951-MHH); *see also* *28 U.S.C. §§ 1331*, *1441(a)*. The plaintiffs filed a 9-count amended complaint in this Court on July 3, 2015. (Doc. 6, Case No. 2:15-cv-00951-MHH).

The defendants moved to dismiss the plaintiffs' amended complaint pursuant to [*Federal Rules of Civil Procedure 8(a)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YK-00000-00&context=), [*9(b)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YN-00000-00&context=), and [*12(b)(6)*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5GYC-1WP1-6N19-F0YW-00000-00&context=). (Docs. 10, 19, Case No. 2:15-cv-00951-MHH). On July 29, 2016, the Court dismissed with prejudice the plaintiffs' claims under RICO and the Sherman Act (counts V—IX) and remanded the plaintiffs' claims for civil conspiracy and intentional interference with business relations (counts II and III) to state court. (Doc. 27, Case No. 2:15-cv-00951-MHH). The Court did not remand the plaintiffs' state-law ***antitrust*** claims (counts I and IV) because the plaintiffs voluntarily dismissed those claims. (*See* Doc. 3-1, pp. 3, 5; Doc. 27, p. 1, Case No. 2:15-cv-00951-MHH).

In state court, the defendants moved to dismiss the plaintiffs' claims for civil conspiracy and intentional interference with business relations. (Doc. 1-2, pp. 2-13). The state court denied the defendants' motion to dismiss. (Doc. 3-1, p. 7). Regarding the plaintiffs' state-law ***antitrust*** claims, the state court found**[\*3]** that because the plaintiffs had voluntarily dismissed those claims in federal court, the claims were not before the state court on remand. (Doc. 3-1, p. 5). The state court explained that because the plaintiffs' voluntary dismissal of the state-law ***antitrust*** claims was without prejudice, the plaintiffs were free to refile the claims. (Doc. 3-1, p. 5).

On November 22, 2016, the plaintiffs filed a second amended complaint in state court. (Doc. 1-2, pp. 70-82). In the second amended complaint, the plaintiffs maintain their claims for civil conspiracy and intentional interference with business relations and re-assert their state-law ***antitrust*** claims under [*Alabama Code §§ 6-5-60*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HMK1-6RDJ-7003-00000-00&context=) and [*8-10-1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPD1-6RDJ-710K-00000-00&context=). (Doc. 1-2, pp. 78-82). The defendants removed the case to this Court on December 9, 2016, again citing *28 U.S.C. § 1331* as the basis for removal. (Doc. 1, p. 3). On January 27, 2017, the plaintiffs filed the motion to remand currently before the Court. (Doc. 3).

**II. DISCUSSION**

The defendants argue that the plaintiffs' second amended complaint alleges violations of federal ***antitrust*** law and "raise[s] substantial issues of federal law because federal law governs Alabama ***antitrust*** actions." (Doc. 1, pp. 3-4; Doc. 5, p. 4). Therefore, according to the defendants,**[\*4]** this case arises under federal law within the meaning of *28 U.S.C. § 1331* and is properly removable under *28 U.S.C. § 1441(a)*. (Doc. 1, pp. 2-4). The plaintiffs argue that the Court should remand this action to state court (1) because the plaintiffs do not affirmatively allege a federal claim in their second amended complaint, but instead only "make brief factual references to the Sherman Act," and (2) because federal ***antitrust*** law does not wholly displace Alabama ***antitrust*** law but merely provides the framework for courts to use when analyzing Alabama ***antitrust*** claims. (*See* Doc. 3, pp. 5-8).

"[R]emoval statutes are construed narrowly[, and] where plaintiff and defendant clash about jurisdiction, uncertainties are resolved in favor of remand." [*Williams v. AFC Enters., Inc., 389 F.3d 1185, 1189 (11th Cir. 2004)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:4DR6-C2Y0-0038-X4YT-00000-00&context=) (citation and internal quotation marks omitted). Generally, "absent diversity jurisdiction, a case will not be removable if the complaint does not affirmatively allege a federal claim." [*Beneficial Nat'l Bank v. Anderson, 539 U.S. 1, 6, 123 S. Ct. 2058, 156 L. Ed. 2d 1 (2003)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48RN-BY10-004C-0017-00000-00&context=). As an exception to this rule, "a state claim may be removed to federal court . . . when a federal statute wholly displaces the state-law cause of action through complete pre-emption." [*Id. at 8*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48RN-BY10-004C-0017-00000-00&context=). The United States Supreme Court explained in *Beneficial*: "[w]hen the federal statute completely pre-empts the state-law cause**[\*5]** of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." *Id.* Such a claim, according to the Supreme Court, is therefore removable under *28 U.S.C. § 1441*. *Id.*

The defendants do not argue that federal jurisdiction exists because federal ***antitrust*** law completely preempts Alabama ***antitrust*** law. In fact, the defendants assert that "this is not an issue of federal preemption[.]" (Doc. 5, p. 4). The Court agrees. *See* [*California v. ARC Am. Corp., 490 U.S. 93, 102, 109 S. Ct. 1661, 104 L. Ed. 2d 86 (1989)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:3S4X-BF10-003B-42H3-00000-00&context=) ("Congress intended the federal ***antitrust*** laws to supplement, not displace, state ***antitrust*** remedies . . . [a]nd on several prior occasions, the Court has recognized that the federal ***antitrust*** laws do not pre-empt state law.") (citations omitted). Thus, removal is appropriate under *28 U.S.C. § 1331* only if the plaintiffs' second amended complaint affirmatively alleges a federal claim. [*Beneficial, 539 U.S. at 6*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48RN-BY10-004C-0017-00000-00&context=). It does not.

In their second amended complaint, the plaintiffs allege that they routinely received from PPG products that were shipped via interstate and intrastate commerce and that they routinely transacted business with businesses and individuals located in states such as Alabama, Florida, Mississippi, Georgia, and Kentucky. (Doc. 1-2, p.**[\*6]** 72, ¶¶ 14-21). The plaintiffs also state in the factual allegations section of the second amended complaint that the defendants' conduct "violates *Sections 1* and *2* of the Sherman Act . . . ." (Doc. 1-2, p. 78, ¶¶ 50-51). The plaintiffs do not discuss the Sherman Act, or any other federal law, elsewhere in the pleading. Instead, the plaintiffs assert four claims under Alabama law: creation of an unlawful trust, combine, or monopoly in violation of [*Alabama Code § 6-5-60*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HMK1-6RDJ-7003-00000-00&context=); civil conspiracy; intentional interference with business relations; and price fixing or limiting the quantity of a commodity in violation of [*Alabama Code § 8-10-1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPD1-6RDJ-710K-00000-00&context=). (Doc. 1-2, pp. 78-82). The plaintiffs explicitly state that all four claims "are state law claims." (Doc. 1-2, p. 71, ¶ 8).

The defendants contend that the plaintiffs' references to the Sherman Act in paragraphs 50 and 51 "appear to state a cause of action for a violation of the Sherman Act even though it is not asserted as a separate count" and that the plaintiffs' allegations regarding interstate commerce "give[] rise only to a federal ***antitrust*** claim, not a state law claim" because Alabama's ***antitrust*** laws ***regulate*** only activity that occurs within the geographical boundaries of Alabama. (Doc. 5, pp. 2, 4).**[\*7]** The Court is not persuaded by the defendants' arguments.

A suit arises under federal law "only when the plaintiff's statement of his own cause of action shows that it is based upon [federal law]." *See* [*Beneficial, 539 U.S. at 6*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:48RN-BY10-004C-0017-00000-00&context=). The plaintiffs' second amended complaint shows that the plaintiffs' claims are based on Alabama common law and [*Alabama Code §§ 6-5-60*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HMK1-6RDJ-7003-00000-00&context=) and [*8-10-1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPD1-6RDJ-710K-00000-00&context=), not federal law. (*See* Doc. 1-2, pp. 71, 78-82). [*Sections 6-5-60*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HMK1-6RDJ-7003-00000-00&context=) and [*8-10-1*](https://advance.lexis.com/api/document?collection=statutes-legislation&id=urn:contentItem:5CCY-HPD1-6RDJ-710K-00000-00&context=)"reach transactions within this state, in the geographic sense, even though such transactions may affect interstate commerce[.]" *See* [*Griffiths v. Blue Cross and Blue Shield of Ala., 147 F. Supp. 2d 1203, 1220 (N.D. Ala. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43BG-9GN0-0038-Y36R-00000-00&context=) (citations and internal quotation marks omitted). Thus, the plaintiffs' references to interstate commerce do not prohibit the plaintiffs from asserting a claim under Alabama ***antitrust*** law.[[1]](#footnote-0)1 Likewise, the plaintiffs' statements regarding the Sherman Act are consistent with the plaintiffs' assertion that the second amended complaint contains only state law claims because "the federal law relating to monopolization governs Alabama ***antitrust*** actions." [*Id. at 1218*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:43BG-9GN0-0038-Y36R-00000-00&context=); (*see* Doc. 1-2, p. 71, ¶ 8).

The plaintiffs' second amended complaint contains allegations related to conduct that is ***regulated*** by Alabama ***antitrust*** law, and the plaintiffs specifically state in the second amended complaint that they are not**[\*8]** asserting any federal claims. (*See* Doc. 1-2, p. 71, ¶ 8). Therefore, the defendants have not met their burden to show that the second amended complaint presents a federal question. *See* [*Kirkland v. Midland Mortg. Co., 243 F.3d 1277, 1281 n. 5 (11th Cir. 2001)*](https://advance.lexis.com/api/document?collection=cases&id=urn:contentItem:42HN-F1K0-0038-X047-00000-00&context=) ("[I]n removal cases, the burden is on the party who sought removal to demonstrate that federal jurisdiction exists.").[[2]](#footnote-1)2

**III. CONCLUSION**

For the reasons discussed above, the Court **GRANTS** the plaintiffs' motion to remand (Doc. 3) and **REMANDS** this action to the Circuit Court of Jefferson County, Alabama.

**DONE** and **ORDERED** this April 7, 2017.

/s/ Madeline Hughes Haikala

**MADELINE HUGHES HAIKALA**

**UNITED STATES DISTRICT JUDGE**

**End of Document**

1. 1The Court expresses no opinion about the viability of the plaintiffs' state-law ***antitrust*** claims. The Court only notes that the plaintiffs' allegations regarding interstate commerce do not give rise to a federal claim for purposes of the remand analysis in this case. [↑](#footnote-ref-0)
2. 2Furthermore, even if the Court were to find that the plaintiffs' second amended complaint asserts claims under the Sherman Act, the Court would not exercise jurisdiction over those claims because the Court dismissed those claims with prejudice on July 29, 2016. (Doc. 27, Case No. 2:15-cv-00951-MHH). Instead, the Court would strike the federal claims from the second amended complaint and remand the action to state court. [↑](#footnote-ref-1)