

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

MCAFEE, INC.,

Plaintiff,

v.

WILMER CUTLER PICKERING

HALE AND DORR LLP,

Defendant.

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Civil Action No. 4:08-CV-160

**DEFENDANT WILMER CUTLER PICKERING HALE AND DORR'S
NOTICE OF WITHDRAWAL OF SUPERSEDED MOTION TO DISMISS**

The Court's July 1, 2008 Order granting leave for plaintiff to file a Third Amended Complaint (Dkt. #27) mooted WilmerHale's original motion to dismiss the prior complaint (Dkt. #7). Although there is authority permitting a movant to request that the court rule on a pending motion to dismiss despite the filing of a new complaint, WilmerHale believes that the better course here is to provide the Court with one set of motion papers directed at the operative complaint, especially since plaintiff has dropped what had been its lead claim (equitable subrogation) and has added a new one (assumpsit). WilmerHale therefore withdraws its pending motion to dismiss as superseded, which should help clarify the procedural posture of the case. Pursuant to Fed. R. Civ. P. 15(a)(3), WilmerHale timely will move to dismiss Plaintiff's Third Amended Complaint by July 16, 2008.

Dated: July 14, 2008

Respectfully submitted,

Of Counsel:

Shawn M. Bates
State Bar No. 24027287
Yetter, Warden & Coleman, L.L.P.
909 Fannin, Suite 3600
Houston, Texas 77010
(713) 732-8000
(713) 632-8002 (Fax)

Gerson A. Zweifach
Williams & Connolly LLP
725 Twelfth St., N.W.
Washington, D.C. 20005
202-434-5534
202-434-5029 (Fax)

/s/ R. Paul Yetter
R. Paul Yetter
State Bar No. 22154700
Yetter, Warden & Coleman, L.L.P.
909 Fannin, Suite 3600
Houston, Texas 77010
(713) 732-8000
(713) 632-8002 (Fax)

Attorney-in-Charge for Defendant Wilmer
Cutler Pickering Hale and Dorr LLP

Certificate of Service

I certify on this 14th day of July, 2008, a true copy of this notice was filed and served electronically on all counsel of record by e-filing and/or facsimile.

/s/ Shawn M. Bates
Shawn M. Bates