

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
SOUTHERN DIVISION**

<b>JAMES KNOWLTON and GERALDINE KNOWLTON</b>	§ § §	<b>PLAINTIFFS</b>
<b>v.</b>	§ §	<b>Civil Action No. 1:06-CV-044-LG-RHW</b>
<b>COMEAX INSURANCE AGENCY, LLC.</b>	§ §	<b>DEFENDANT</b>

**ORDER TO DISMISS FOR LACK OF JURISDICTION**

THIS MATTER COMES BEFORE THE COURT upon the question of lack of jurisdiction. “United States District Courts and Courts of Appeals have the responsibility to consider the question of subject matter jurisdiction *sua sponte* if it is not raised by the parties and to dismiss any action if such jurisdiction is lacking.” FED.R.CIV.P. 12(h)(3). *Matter of Kutner*, 656 F.2d 1107, 1110 (5th Cir.1981), *cert. denied*, 455 U.S. 945, 102 S.Ct. 1443, 71 L.Ed.2d 658 (1982). The record before the Court indicates that Plaintiffs have voluntarily dismissed their action against Fidelity National Property & Casualty Insurance Company. Thus, the only remaining defendant is non-diverse.<sup>1</sup> Accordingly,

**IT IS ORDERED AND ADJUDGED** that Plaintiffs’ Motion to Remand filed January 19, 2006, [4-1] should be and is hereby **DENIED AS MOOT**.

**IT IS FURTHER ORDERED AND ADJUDGED** that the above styled and numbered

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<sup>1</sup> At the time the Notice of Removal was filed, Comeaux Insurance Company had not yet been served with process. The record does not indicate whether service of process has since been effectuated. Comeaux is a limited liability Mississippi corporation having its principal place of business in Mississippi.

cause should be, and is hereby **DISMISSED WITHOUT PREJUDICE**, for lack of subject matter jurisdiction pursuant to FED.R.CIV.P. 12(h)(3).

**SO ORDERED AND ADJUDGED** this the 23<sup>rd</sup> day of January, 2006.

*s/ Louis Guirola, Jr.* \_\_\_\_\_

LOUIS GUIROLA, JR.  
UNITED STATES DISTRICT JUDGE