

WEDNESDAY, APRIL 27, 2011  
9:00 A.M.

NO. 1

#25783

DE SMET INSURANCE COMPANY  
OF SOUTH DAKOTA,  
Plaintiff and Appellee,

vs.

TABITHA POURIER,  
Defendant and Appellant.

Mr. Robert L. Morris  
Day Morris Law Firm, LLP  
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(FOR APPELLANT)

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(FOR APPELLEE)

The Honorable Thomas L. Trimble  
Seventh Judicial Circuit  
Pennington County

(CIV 07-1478)

Statement of Legal Issues

- I. Whether the "owned but not insured" exclusion in the DeSmet Insurance automobile policy is void as against the public policy of the State of South Dakota as applied to the stipulated facts of the case?

The Circuit Court ruled that the "owned but not insured" exclusion precluded Tabitha Pourier from recovering in this action.

*Gloe v. Iowa Mutual Ins. Co.*, 2005 SD 29, 694 N.W.2d 238

*Phen v. Progressive Northern Ins. Co.*, 2003 SD 133, 672 N.W.2d 52

*Jaimes v. State Farm Mutual Auto Ins. Co.*, 53 P.3d 743,747 (Colo. App. 2002)

- II. Whether, if it is determined that the "owned but not insured" exclusion is void, Tabitha Pourier is entitled to payment of her uncompensated damages under DeSmet Insurance's underinsured motorist coverage?

The Circuit Court ruled that South Dakota law precludes Tabitha Pourier from stacking underinsured coverage to an amount greater than that which was contracted.

SDCL 58-11-9.5

*Nickerson v. American States*, 2000 SD 121, 616 NW2d 468, 471.

*Phen v. Progressive Northern Ins. Co.*, 2003 SD 133, 672 N.W.2d 52, 54.

*Hockett v. LaPointe*, 2006 SD 49, 716 N.W.2d, 475.