

Professional Liability Case Study

Presented by Andrew Spencer of LMS Prolink

William Simard was a well-compensated executive with an advertising agency in Vancouver. One day he stunned his employer and colleagues by requesting a paid leave of absence to focus on his mental health that really deteriorated after a trying divorce. The leave was granted and William was compensated by the ad agency's disability insurance policy issued by *XYZ Insurance Company*. However, one year after the initial claim payout, XYZ commenced an investigation with the opinion that William was fit to return to work. Based on their findings, XYZ denied continued claim payouts to Mr. Simard. "Going to bat" for one of their most valued and beloved employees over the years, William's employer hired a lawyer to sue the XYZ Insurance Company for failing to live up to the insurance contract that they engaged to fulfill.

Camille Arthur is a forensic evaluator with a well-earned reputation as one of the most respected professionals in her field. Throughout her 23-year career, Camille has provided her expertise in a bevy of situations and for a wide variety of clientele. In May 2014, Camille was contracted by the law firm defending the XYZ Insurance Company to evaluate the mental health of William Simard. Camille conducted an interview with William and filed a report with XYZ concluding that William was in fact fit to return to work. The report was one of the key items the judge referenced ruling in favour of XYZ Insurance Company and denying the payment of compensation to William Simard.

On a rainy day in October 2015, Camille Arthur was delivered a statement of claim pursuing \$1.4 million in damages to compensate for lost income as well as pain and suffering. Her heart rose to her throat. The plaintiff, William Simard, alleged that Ms. Arthur's report was the product of professional negligence. Mr. Simard asserted that it was clear from the first interview question that Camille was anything but neutral in her duties as a forensic evaluator. Furthermore, the statement of claim against her referenced the fact that the outcomes of her past evaluations had rarely contravened the interest of the contracting lawyers. Panicked, Camille called the law firm that had contracted her to assess William Simard and they counselled her to not make any contact with William Simard and/or his lawyer but to report the matter to her Professional Liability (also known as *Errors & Omissions* liability) insurance broker immediately.

Camille did her best to calmly explain the situation to her insurance broker, Christine Hanna. Christine advised Camille to e-mail the statement of claim to her immediately and the matter proceeded as follows:

- The statement of claim and Camille's Professional Liability policy information were submitted to Camille's Professional Liability insurance company immediately after the phone call;
- Christine arranged for a claim adjustor at the insurance company to contact Camille that same day to prepare her for the next steps. Shortly afterwards, legal counsel experienced in defending vocational evaluation claims was assigned to Camille and worked with her to prepare a defense.
- After months of negotiations between the defense and plaintiff lawyers, it was strongly recommended by Camille's legal representation that the case be settled out of court for a portion of the damages initially sought by the plaintiff, William Simard. In return, Camille would not have to admit wrongdoing. While Camille strongly maintained that she adhered to best practices and conducted herself with neutrality and professionalism to the best of her ability, her defense lawyer was concerned that there were segments of her report that could be interpreted as exhibiting subjective bias. Mr. Simard agreed to the proposed settlement.
- Camille's Professional Liability policy responded accordingly:

Defence Costs (lawyer fees, expert testimonial fees): **\$79,000**

Settlement to Plaintiff (William Simard): **\$180,000**

Policy Deductible: **\$0**

Total Claim Amount Insured by Professional Liability Policy: **\$259,000**

While this experience was undoubtedly the worst of her career, Camille survived it and contends that she is stronger for it. Thankfully, she obtained and maintained an insurance policy that she never thought she would use.

All names, characters and incidents portrayed in this article are fictitious. No identification with actual persons is intended or should be inferred.