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## **California court reaffirms no coverage for sexual assault**

By Samuel H. Ruby

A Los Angeles appellate court has held that intentional conduct allegedly amounting to sexual assault and false imprisonment does not qualify as an "occurrence" for purposes of general liability insurance. Lyons v. Fire Insurance Exchange, --- Cal. Rptr. 4<sup>th</sup> --- (2008).

Stephen Lyons, a former professional baseball player, grabbed a woman's wrist and restrained her while making sexual advances. When she sued for assault, battery, and false imprisonment, Lyons sought defense and indemnity from his homeowner's insurer. The insurer denied coverage, citing the policy's "occurrence" requirement. In typical fashion, the policy defined "occurrence" as an accident.

Lyons argued that his conduct could have been an accident because he could have mistakenly thought he had the victim's consent to his advances. However, the Court of Appeal reaffirmed that under California law, the accident requirement "refers to the nature of the insured's conduct, not his state of mind." The court held that whatever motivated Lyons' conduct, that conduct "simply could not [have been] an accident."

Update: The opinion is now published as 161 Cal. App. 4<sup>th</sup> 880, 74 Cal. Rptr. 3d 649.