

## Lawsuit Literally Out of Left Field - NY Appeals Court Tosses Another Foul Ball Injury Case

Posted on September 23, 2009 by [John Hochfelder](#)

It's got to stop at some point. **Some "fans" trying to ruin our national pastime - the game of baseball.** Spectator lawsuits have been going on for quite some time, as we discussed just last week, [here](#). Now, there's a brand new case and I'll tell you all about it.

Look, I'm a trial lawyer and the only cases I handle are those in which someone caused serious traumatic injuries. And in this new case, **Judith Rosenfeld suffered an orbital fracture requiring surgery and some permanent vision loss when she was hit by a foul ball while a spectator at a baseball game.** I can get a jury to award hundreds of thousands of dollars (if not more) for pain and suffering for those types of injuries. There's a catch, though. Someone other than my client has to be at fault! That's why **I'd have declined Rosenfeld's case had she come to me for representation.** There was no one at fault.

**Here's what happened.** Ms. Rosenfeld went to **Dutchess County Stadium** in Wappingers Falls, New York on August 5, 2006 to watch the home team **Hudson Valley Renegades** (Major League Baseball's minor league affiliate of the Tampa Bay Rays) take on the Vermont Lake Monsters. The Renegades won, 3-2.

**It's a beautiful ballpark and here's its exterior on opening day this year:**



## Plaintiff was struck by a foul ball while seated in a picnic area in the Rookies Retreat



### section:

As you can see, Rosenfeld's seat was in the area furthest away from home plate down the left field line. It must have been quite a hard hit ball to cause a facial fracture.

The real story here began a year later in 2007 when Rosenfeld lawyered up and sued. Her case was tossed out on July 15, 2008 when a judge dismissed all of her claims without a trial. The **judge stated that there was sufficient protective netting behind home plate which extended up the foul lines to the dugouts** and also there were public announcements made advising fans that they could be reseated behind the nets if they wished. Rosenfeld did not wish.

After the dismissal, Rosenfeld appealed and this week in [Rosenfeld v. Hudson Valley Stadium Corp.](#) the **appeals court agreed that the case had no merit** and was properly dismissed ([lower court's decision here](#)). The four judge panel stated that **the proprietor of a ball park need only provide reasonable screening for the area of the field behind home plate and, therefore, fans injured by foul balls in other areas do not have viable claims.**

Many lawsuits have been asserted over the years for foul ball injuries and the issues were long ago resolved by the highest court in New York - the Court of Appeals - when it ruled in [Atkins v. Glens Falls City School District](#) (1981) that a lawsuit for a spectator's foul ball injuries will not stand when there's a reasonable backstop or netting behind home plate and the fan is injured elsewhere in the park.

In 1984, the Court of Appeals reiterated the rule in [Davidoff v. Metropolitan Baseball Club, Inc.](#) and stated that it applied to the dismissal of a lawsuit by a 14 year old girl who lost vision in an eye when hit by a foul ball while seated in a box seat near first base behind a three foot fence.

In yet another case, a season ticket holder, Pianka Ray, M.D., was struck by a foul ball while in his box seat near first base beyond the home plate nets. His case, like all the others before him, was dismissed by the trial judge. He appealed, though, claiming that his case was different from all of the others in that he was distracted by the ball club's team mascot. Here's the kicker: this was a case involving the very same stadium as in the Rosenfeld case. Dismissal of Dr. Ray's case

was affirmed in 2003 in **Ray v. Hudson Valley Stadium Corp.** with the appeals judges stating plainly that the provision of home plate area netting fulfills a ballpark's obligations and a fan injured in seats beyond the netting assumes the risk of an injury and has no viable lawsuit.

In light of the **Atkins**, **Davidoff** and **Ray** cases, how is it that Judith Rosenfeld could sue for her injuries? Simple. One can always sue - start a lawsuit - and there are few if any real penalties for bringing on a frivolous lawsuit.

Rosenfeld's suit was - as it should have been - thrown out, but what of all the costs, time and aggravation suffered by the defendants? There were seven different parties sued, including the stadium owner, the team, the engineers and architects who designed the stadium and even the local chamber of commerce. Each had to hire lawyers and investigators and devote substantial unprofitable time to defending the case. Some of those lawyers are very experienced, successful and probably charged pretty hefty fees. Who reimburses the defendants after they win? No one.

**This is the kind of case that will cry out for a loser pays rule to be enacted** and one of these days, if cases like this and **Nutley v. SkyDive the Ranch** (the notorious skydiver's broken fingers case discussed [here](#) ) continue to be brought and dismissed, then we may well see legislative action. Many have been discussing for it for years, for example, **Walter Olson at Overlawyered**.

I hope I have not given the impression that I don't sympathize with Ms. Rosenfeld. I do - insofar as she was injured, I have a great deal of sympathy for her; however, when Rosenfeld (and her lawyers) claimed that seven different parties were at fault and sued each of them, she was wrong. And that's a fact. Actually, **that's the law** too.