

## Foul Ball Plaintiff Can't See that the Game is Over; Another Appeal this Week. Will Sanctions be Ordered for Frivolous Appeal?

Posted on October 2, 2009 by [John Hochfelder](#)

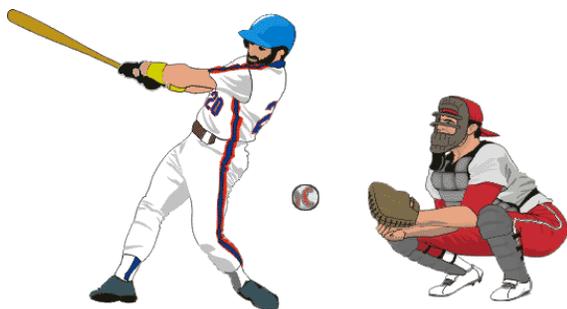
I know I was a bit steamed last week when I took sides against a plaintiff and her lawyers for suing seven different parties after she was hit by a foul ball at a Hudson Valley Renegades minor league baseball game while seated in a left field picnic area in the stadium. [Here](#), I suggested that Judith Rosenfeld's lawsuit should never have been brought - she shouldn't have been allowed in the batters box.

While I sympathize with the serious eye injury sustained by Ms. Rosenfeld, her **lawsuit had no basis being brought in view of prior court rulings**, some from the highest court in New York (the Court of Appeals) and one against the same defendants on very similar facts.

Like it or not, **the law in New York is clear**: a baseball game spectator who chooses to sit in an area of the stadium that's not protected with a net or fence (when the area behind home plate is) will have no viable lawsuit when struck and injured by a foul ball. And those were the facts in **Rosenfeld v. Hudson Valley Stadium Corp.**

On that basis, the [trial judge threw out her lawsuit](#), then the [appeals court upheld the dismissal](#). That surely should have been the end of this saga. It wasn't.

This week, Rosenfeld's lawyers filed a [motion for reargument or leave to appeal](#) to the Court of Appeals. No new argument is set forth. As with her other attempts, **Rosenfeld will strike out again.**



# **STRIKE THREE!**

This time, though, **she should be sanctioned** by the court and forced to pay the legal fees incurred by the defendants. Rarely used, such a remedy for frivolous litigation is specifically provided for under [Section 130-1.1 of the Rules and Regulations of the Judiciary Law of New York](#). And recently, an appellate court invoked this rule to order a plaintiff and its attorney to pay the legal fees of their opponent in a case in which they were held to have pursued a frivolous appeal ([Yenom Corp. v. 155 Wooster Street, Inc.](#)).

**This is not about punishing a losing plaintiff; rather, it's about fairness to all concerned. Justice for everybody.** Suing seven parties to begin with (the engineers and architects who designed the stadium were even included) was bad enough but forcing all those parties through appeal after appeal, incurring many thousands of dollars in legal fees and related costs is unfair. They have repeatedly asserted that there was no basis for the suit in view of the substantial precedent. And they have been right time and again. So what about fairness to them? **The defendants should be made whole insofar as their legal fees are concerned.** That's justice. That's fair.