

Thrill Seeking Skydiver's Parachute Fails to Open, Instructor Saves Her, She Sues for Two Broken Fingers

Posted on August 14, 2009 by [John Hochfelder](#)

You can't make this stuff up. On July 12, 2003, Lisa Nutley sought to celebrate her birthday with the thrill of her life - a recreational parachute jump. So, she drove to SkyDive the Ranch (web site [here](#)), a skydiving facility in Gardiner, New York that's been in business for over 30 years.

As this was Lisa's first ever jump, it was to be a tandem jump - an instructor would be tethered to her.

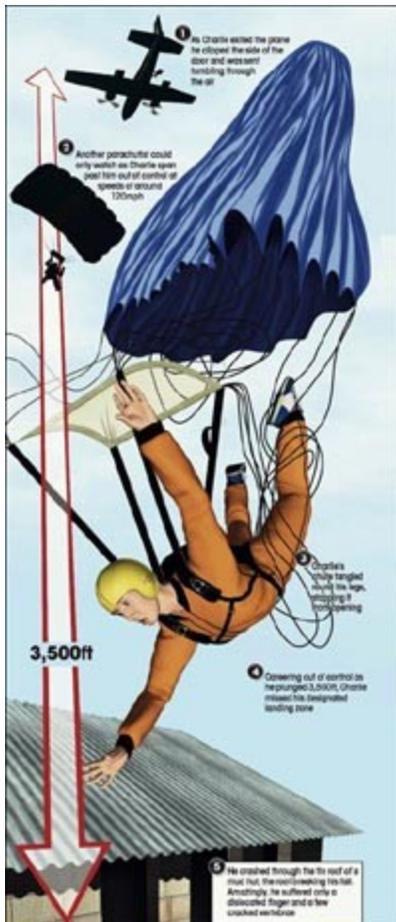
Here are some happy tandem jumpers (this is not Ms. Nutley):



Lisa met with the instructor at SkyDive's facility and was shown a half-hour instructional video. And, before the jump, she signed waivers and releases agreeing that SkyDive would incur no liability for any injuries she might sustain during the course of her jump.

Off she went to celebrate her 33rd birthday. Lisa jumped out of the plane with Robin Rohemo, her tandem partner, and that's when it got really thrilling - the main parachute failed to deploy and Lisa hurtled toward the ground, somersaulting in the air, terrified of imminent and certain death when she'd smash into the ground at 100 miles per hour.

Here's what it looks like when a chute gets tangled:



Luckily for Lisa, Mr. Rohemo knew exactly what to do during this mid-air free fall. First, he tried to cut the failed main chute off. Failing that, he told Lisa he needed her to stand on his knees and hold on. Lisa's words: "So I am holding as tight as I possibly could standing on his knees as we are falling to our death and I just felt this tremendous pressure pull on my hand ... and I figured we were going to die" **Rohemo was able to free up the back-up chute, he and Lisa floated down to safety and no one died that day.**

Whew, what a thrill. Maybe Lisa should've paid extra for the additional thrill. Instead, **because her third and fourth fingers were fractured during the fall, she lawyered up and sued SkyDive claiming that Rohemo - her savior - had wrongfully told her to hold tight to a dangerous area of the parachute he was trying to cut away and then never told her to let go at an appropriate time.** This, she and her lawyer claimed, presented Lisa with an enhanced risk not assumed or inherent in a tandem jump.

Baloney, said the defense. In moving for summary judgment (seeking to have the lawsuit thrown out before trial), SkyDive argued that Lisa was fully aware of all of the risks associated with skydiving and thus all her claims were barred. **Under New York law, a person who voluntarily participates in recreational activity is deemed to consent to the apparent or reasonably foreseeable consequences of that activity.** What's more obvious than the risk of the chute not opening? That's any novice's first (and worst) fear when contemplating a skydive.

And then there are three **waivers that Lisa signed specifically acknowledging that she understood the risks of injury or death and agreeing that she would not sue.** [Here is the waiver](#) right on SkyDive's web site.

It's beyond me how in the world anyone would, under these circumstances, have the gumption to sue for two fractured fingers (one of which required surgery to repair). After three years of litigation, [an appellate court this week finally tossed this case out](#), granting the defendant summary judgment dismissing the complaint (overruling a [lower court judge's decision earlier this year](#) allowing the case to proceed to trial).

The appeals court found that SkyDive should win because Nutley had assumed the risk of injury in that she:

- knew she was engaged in an inherently dangerous recreational activity and
- knew of the obvious risk that the main chute could fail to open

So that's the end of this case, right? Wrong. [The waivers that Nutley signed included language that, in a lawsuit such as the one Nutley started here, she'd have to pay SkyDive's attorneys fees and litigation costs.](#) While this type of contractual provision is generally disfavored in New York, Nutley failed to defend against it (her lawyer neglected to serve a so called reply to defendant's counterclaim asserting its right to legal fees and costs) so this issue is still alive.

Inside Information:

- SkyDive offered \$5,000 to settle several times
- SkyDive intends to pursue its claim for legal fees and costs which by my estimate could exceed \$50,000

This is a lawsuit that never should have been started. Lisa Nutley knew there was a risk that her chute might not open. When her worst fear happened, she was saved by her tandem diver. Suing for her two fractured fingers was not only ungracious but also it was contrary to settled legal principles. It was a lawsuit destined to be dismissed. Lisa [should](#) now pay SkyDive's legal fees and costs. And it appears that she will.