

The Workout:

This is the exact workout that permanently disabled Makimba Mimms, All-Navy wrestler, who is suing Ruthless Training for his injuries.

"Makimba"

Three rounds, one each of 15-10-5 reps, for time, of: Dumbbell Thrusters with 10 lbs
Air Squats
Burpees

The MilitaryTimes Article

CrossFit Critique

Lawsuit alleges workout damaged health of former sailor By Bryan Mitchell – bmitchell@militarytimes.com

Posted: August 18, 2008

MANASSAS, Va. — A lawsuit filed by a former sailor has raised concerns about the dangers of a workout regimen that is rapidly growing in popularity across the military.

The lawsuit, filed by former Information Systems Technician 1st Class Makimba Mimms in Prince William County, Va., Circuit Court late last year, seeks \$500,000, as well as punitive damages, in connection with the permanent disability Mimms allegedly suffered as a result of performing the CrossFit workout under the direction of a trainer at a Manassas gym.

CrossFit, an intense strength and conditioning regimen, is practiced by thousands worldwide at dozens of ad-hoc clubs and is especially popular with military and law enforcement communities.

Neither CrossFit nor its founder, Greg Glassman, is listed as defendants in the lawsuit, but the word "CrossFit" appears dozens of times throughout the legal documents connected to the suit. Glassman could not be reached for comment.

The lawsuit is part of an emerging body of evidence that CrossFit may be damaging to participants' health, perhaps even causing death — a possibility acknowledged by its founder as early as 2005.

Following a June story on the popularity of CrossFit in Military Times newspapers, Capt. Jonathan Picker, commander of the Navy's Center for Personal and Professional Development, posted a story that raised concerns about CrossFit in the July issue of the center's internal magazine.

"Several [experts] in the sports medicine field (military and civilian) have addressed a concern that the program has the potential for causing an increased incidence of musculoskeletal injuries and even muscle breakdown (rhabdomyoloysis) and therefore is not supported by [Navy Center for Personal and Professional Development]," the story states. "Granted, anyone can develop a program that's very intense, but there's a safer way of doing this for our sailors." Picker could not be reached for comment.

Navy officials said studies are underway to examine CrossFit and its potential effects on service members, but those involved with the studies declined to discuss the specifics.

A section of Picker's story was posted on a CrossFit Web site and subsequently mocked by some of CrossFit's more strident advocates.

"You know what's another excellent way to get a musculoskeletal injury?" one poster asked in reply to Picker's assessment. "Getting shot because you can't run fast enough with 50 [pounds] on your back!"

However, Glassman posted a warning on the CrossFit site in October 2005 labeled "CrossFit induced Rhabdo," telling participants about the potential problems associated with the unforgiving workout, while Eugene Allen — a Washington State law enforcement officer who runs a CrossFit blog — posted an even less ambiguous warning in May 2005 titled "Killer Workouts."

"With CrossFit, we are dealing with what is known as exertional rhabdomyolysis," he wrote. "It can disable, maim and even kill."

That's what Mimms contends happened to him in one intense exercise session Dec. 11, 2005, in which, he said, he suffered injuries he has yet to recover from.

In the initial seven-page complaint filed Nov. 21, Mimms' attorney, Phillip Walsh, contends that Manassas World Gym, Ruthless Training Concepts and Ruthless trainer Javier Lopez failed to exercise diligence before instructing an unprepared Mimms in performing CrossFit.

"The defendants, in concert with one another, entreated, promoted, encouraged and coached Mr. Mimms to perform and endure the extreme exertion prescribed by the CrossFit regimen," court records state.

The suit claims Mimms suffered from rhabdomyolysis — which occurs when tiny shreds of muscle fiber are absorbed by the bloodstream and ultimately poison the kidneys — as a result of performing a CrossFit workout under the direction of Lopez, who worked as Ruthless Training Concepts trainer at the now-defunct Manassas World Gym.

Mimms, who was in the Navy for 11 years, got out in May and was not separated for medical reasons, declined to discuss the case, pending a trial slated to begin Oct. 6 in Manassas.

Lopez could not be reached for comment. However, statements made by Lopez to court officials during a pre-trial deposition indicate he was aware that "people who perform too intensely perhaps can undergo this rhabdomyolysis," he said.

Ruthless Training Concepts, as well as attorneys representing Ruthless and Manassas World Gym, declined to comment on the suit.

Several physicians, including Walter Reed Army Medical Center neurophysiologist Lt. Col. Mark Landau, concluded that Mimms suffered severe injuries following his intense CrossFit workout, according to court records.

The injuries included rhabdomyolysis, lumbosacral spine strain and strain of the bilateral quadriceps, according to court documents. As a result of these injuries, Mimms was incapacitated, lost time from work and required surgery, court records show.

"[He] endured great mental and physical pain mental anguish and inconvenience," court records state. "[He] has incurred and will in the future incur medical and related expenses, has sustained permanent disability." The extent of his physical disability was not outlines in court documents.

Dr. Priscilla Clarkson of the University of Massachusetts contends that Lopez encouraged Mimms to perform exercises known to produce rhabdomyolysis. "Adequate precautions to prevent such a condition from occurring were not taken," Clarkson wrote in documents prepared for the lawsuit.

Gray Cook, a physical therapist who consults with a host of NFL teams on strength and conditioning, said CrossFit is not dangerous unless performed by people not physically prepared for its intensity.

Cook stressed that he did not want to disparage CrossFit, and that the program has inherent benefits, such as keeping people active and preventing boredom by mixing up workouts. His concern is that novice participants don't know what they're getting into.

"Football players practice a lot more than they play for a reason," Cook said. "You are not supposed to test drive the system as much as you tune it up."

Mimms is certainly not the only service member to induce rhabdo with a strenuous workout. An article in the February/March 2008 issue of the Medical Surveillance Monthly Report, published by the Armed Forces Health Surveillance Center, indicates the ailment is on the rise across the services.

There were 114 cases of rhabdo across the military services in 2004, four of which required hospitalization. The number rose to 159 in 2007, including 34 that required hospital visits.

No individual cause is provided for the rise in the number of rhabdo cases, and CrossFit is not mentioned in the four-page article.

The articles states that troops struck with rhabdo are more likely to be from Army and Marine units, that cases tend to occur in the summer, and that blacks and other non-white service members are at a higher risk of suffering from the ailment.

Following: The Legal Documents

Law Office of

MARK M. KODAMA, ESQ.

5125 MacArthur Blvd., N. W. Suite 17 Washington, D.C. 20016 Tel: (202) 966-5300

Mark M. Kodama, Esq. Richard McBurrows, Of Counsel Admitted in DC & MD

Facsimile: (202) 966-1212

August 7, 2008

Greg Glassman

Re: <u>Makimba Mimms v. Ruthless Training Concepts, LLC/Javier Lopez/Manassas World Gym</u>, CL 78584.

Dear Mr. Glassman:

I enjoyed speaking with you yesterday. As discussed, you are willing to arrange for us to take your telephone deposition for the purpose of its use for trial. Please find enclosed our Amended Complaint; Plaintiff's Designation of Expert Witnesses; Cross Journal Articles of January 2003, May 2005, October 2005; Girevik Magazine; Getting Fit, Even if It Kills You, *New York Times*, December 22, 2005; CrossFit: The workout sweeping the fleet, *Navy Times*, Jun 25, 2008; A Workout That's Fast, Furious and not for the Faint of Heart, *The Los Angeles Times*; God's Workout, *New York Times Magazine*, March 23, 2008; Ruthless Training Concept Web Site, March 16, 2006; and "Uncle Rhabdo."

I will call the other attorneys and arrange for a mutually agreeable time for everyone within the next 30 days.

Sincerely yours,

Mark M. Kodama

Cc: Philip J. Walsh
Anne Byrne Esq.
Brian Scotti, Esq.

VIRGINIA:

IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

MAKIMBA S. MIMMS

Plaintiff.

ν.

Case No. CL 78584

RUTHLESS TRAINING CONCEPTS, L.L.C., et al.

Defendants.

AMENDED COMPLAINT

(Personal injury)

The plaintiff, Makimba S. Mimms, by and through counsel, herewith for his **Amended** Complaint against the defendants represents and states as follows:

- 1. This honorable Court has jurisdiction over this matter pursuant to Code of Virginia § 17.1-513.
- 2. The plaintiff is an adult *Sui Juris*.
- 3. The defendant Ruthless Training Concepts, L.L.C. (hereafter Ruthless) is a limited liability company organized in Virginia and, at all pertinent times, conducting business in Manassas, Virginia.
- 4. The defendant Javier Lopez (Mr. Lopez) is an adult *Sui Juris*.
- 5. The defendant Manassas World Gym, L.L.C. (hereafter Manassas Gym) is a limited liability company organized in Virginia and, at all pertinent times, conducting business in Manassas, Virginia.

- 6. The incident complained of herein occurred in Manassas, Virginia.
- 7. Venue is proper in this Court pursuant to Code of Virginia § 8.01-262.

COUNT I (Negligence)

- 8. On or about December 11, 2005, the plaintiff Mr. Mimms was an invitee of Manassas Gym at its location 11714 Sudley Manor Drive, Manassas, Virginia.
- 9. At that time and place Manassas Gym was occupying the aforesaid premises and offering guidance, coaching and instruction through Ruthless.
- 10. At that time and place Manassas Gym and Ruthless were engaged in a joint business enterprise, to provide gym facilities and personal trainers, for their mutual benefit with the understanding that they were to share in the profits and that each was to have a right to control or manage.
- 11. Javier Lopez was, at all pertinent times, working as an agent, servant and employee of Ruthless and/or the aforesaid joint business enterprise.
- 12. At the aforesaid time and place, Mr. Mimms was coached and given instruction in physical fitness and weight training by Mr. Lopez.
- 13. At that time and place Ruthless and Mr. Lopez had duties owing to Mr. Mimms, including, but not limited to, the following:
 - a) A duty to exercise ordinary care.
 - b) A duty to refrain from injuring plaintiff.
 - c) A duty to give plaintiff proper and reasonable instruction.
 - d) A duty to refrain from exposing him to unreasonable risks of injury to his person.

- e) A duty to observe and monitor him so as to guard and protect him from injury.
- 14. At the aforesaid time and place the defendant Mr. Lopez, acting within the course and scope of his employment with Ruthless and/or the aforesaid joint business enterprise, breached the duties he owed to plaintiff in many respects including, but not limited to, the following:
 - a) He failed to exercise ordinary care.
 - b) He failed to refrain from injuring plaintiff.
 - c) He failed to give plaintiff proper and reasonable instruction.
 - d) He gave plaintiff unreasonable and hazardous instructions, entreating and demanding that plaintiff exert extraordinary effort, not cease to rest, not cease to drink fluids or regain his strength, breath and resilience.
 - e) He failed to refrain from exposing him to unreasonable risks of injury and indeed exposed him to extraordinary hazards and actual injury to his person.
 - f) He failed to observe and monitor plaintiff so as to guard and protect him from injury.
- 15. At that time and place Manassas Gym owed duties to Mr. Mimms, including, but not limited to, the following:
 - a) A duty to exercise ordinary care.
 - b) A duty to refrain from injuring plaintiff.
 - c) A duty to oversee and observe that proper and reasonable coaching and instruction in physical fitness and exercise is provided to their clients on the premises.

- d) A duty to refrain from exposing clients to unreasonable risks of injury.
- e) A duty to observe and monitor clients so as to guard and protect them from injury.
- 16. At the aforesaid time and place, the defendant Manassas Gym, breached the duties it owed to plaintiff in many respects including, but not limited to, the following:
 - a) It failed to exercise ordinary care.
 - b) It failed to refrain from injuring plaintiff.
 - c) It failed to take prudent steps to ascertain that proper and reasonable instruction was given.
 - d) It acquiesced in and permitted plaintiff to be given unreasonable and hazardous instructions, which entreated and demanded that plaintiff exert extraordinary effort, not cease to rest, not cease to drink fluids or regain his strength, breath and resilience.
 - e) It permitted him to be exposed to unreasonable risks of injury, extraordinary hazards and actual injury to his person.
 - f) It failed to observe and monitor plaintiff so as to guard and protect him from injury.
- 17. Each of the foregoing acts and omissions constituting negligence or gross negligence on the part of the defendants Mr. Lopez, agent for Ruthless and/or the aforesaid joint business enterprise and Manassas Gym and the joint business enterprise of Ruthless and Manassas Gym was done in conscious disregard for the rights of plaintiff or with a reckless indifference to the consequences when the

defendants were aware from their knowledge of existing circumstances and conditions that their conduct would probably result in injury to plaintiff.

- 18. Each of the foregoing acts and omissions constituting negligence or gross negligence on the part of the defendants Mr. Lopez, agent for Ruthless and/or the aforesaid joint business enterprise and Manassas Gym and the joint business enterprise of Ruthless and Manassas Gym was a direct and proximate cause of actual injury to plaintiff.
- 19. Ruthless and/or the aforesaid joint business enterprise are vicariously liable for the aforesaid acts and omissions of Mr. Lopez.
- 20. As a direct and proximate result of the aforesaid negligence or gross negligence of the defendants Lopez, Ruthless and Manassas Gym and/or the aforesaid joint business enterprise, plaintiff was caused to sustain injuries; his muscle fiber broke down; he sustained blood in his urine; strains of the lumbosacral spine; strains overexertion; and other bodily injuries, physical pain, mental anguish and inconvenience, some of which are continuing and will continue into the future, he required medical care, endured great mental and physical pain and suffering, was hospitalized, lost time and income from his employment, has incurred medical and related expenses, will incur medical and other related expenses in the future, has sustained permanent physical disability and loss of earnings, all to his damage.

COUNT II

(Failure to Warn)

(The allegations contained in paragraphs # 1 through 20 are incorporated herein.)

- 21. The defendants Ruthless, Mr. Lopez and Manassas Gym and/or the aforesaid joint business enterprise encouraged and promoted a brand of exercise known as CrossFit.
- 22. CrossFit is an extreme form of exercises, without rest, that is designed to exert, strain and overtax the muscles to the point of exhaustion.
- 23. CrossFit exercises are known to have serious risks of injury to the individual.
- 24. CrossFit exercises are known to cause muscular breakdown, irregular heartbeats, increased levels of potassium and other irregularities in the bloodstream and a condition known as Rhabdomyolysis, which causes muscle damage, excruciating pain and can lead to permanent injury and death.
- 25. The defendants knew or should have known that this regimen of CrossFit exercises they were encouraging and promoting involved the abovementioned serious risks of personal injury.
- 26. Notwithstanding the knowledge aforesaid, the defendants, in concert with one another entreated, promoted, encouraged and coached Mr. Mimms to perform and endure the extreme exertion prescribed by the CrossFit regimen.
- 27. The defendants failed to warn Mr. Mimms of the risks and dangers inherent in the CrossFit regimen.
- 28. If plaintiff had been warned of the unreasonable risks and hazards of this exercise regimen, he would not have undergone it; he would have stopped, rested, drank fluids and ceased the exercise.

- 29. Each of the foregoing acts and omissions constituting failure to warn on the part of the defendants Mr. Lopez, agent for Ruthless and/or the aforesaid joint business enterprise and Manassas Gym and the joint business enterprise of Ruthless and Manassas Gym was done in conscious disregard for the rights of plaintiff or with a reckless indifference to the consequences when the defendants were aware from their knowledge of existing circumstances and conditions that their conduct would probably result in injury to plaintiff.
- joint business enterprise failure to warn plaintiff of the known risks of the CrossFit regimen, plaintiff was caused to sustain injuries; his muscle fiber broke down; he sustained blood in his urine; strains of the lumbosacral spine; strains of both quadriceps; the condition known as Rhabdomyolysis due to acute muscle overexertion; and other bodily injuries, physical pain, mental anguish and inconvenience, some of which are continuing and will continue into the future, he required medical care, endured great mental and physical pain and suffering, was hospitalized, lost time and income from his employment, has incurred and will in the future incur medical and related expenses, has sustained permanent physical disability all to his damage.

WHEREFORE, the plaintiff demands judgment against the defendants, jointly and severally, based upon Count I and or Count II in the amount of Five Hundred Thousand Dollars (\$500,000.00) compensatory damages, plus Three Hundred Fifty Thousand Dollars (\$350,000.00) exemplary or punitive damages plus interest from December 11, 2005, plus costs and such other relief as the Court deems just and proper.

Respectfully Submitted, MAKIMBA S. MIMMS By Counsel

Philip J. Walsh Esq. VA Bar No. 13122

PHILIP & WALSH & ASSOCIATES, P.C.

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Of-Counsel for plaintiff

JURY DEMAND

Plaintiff demands a trial by pury

MAKIMBAS. MIMN

By Counsel

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed, first class mail, postage prepaid, this 1st day of August, 2008 to:

Warren H. Britt, Esq. Anne C. Byrne, Esq. Law Offices of Warren H. Britt, P.C. 10800 Midlothian Tnpk., Suite105 Richmond, VA 23235

Douglas M. Coleman, Esq. Brian A. Scotti, Esq. Coleman & Ragland, PLC 602 Cameron St. Alexandria, VA 22314

Philip . Walsh

VIRGINIA:

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IN THE CIRCUIT COURT OF PRINCE WILLIAM COUNTY

MAKIMBA S. MIMMS.

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Plaintiff.

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Case No. CL 78584

:
RUTHLESS TRAINING CONCEPTS, LLC, et al.:

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Defendants.

PLAINTIFF'S DESIGNATION OF EXPERT WITNESSES

The plaintiff Makimba Mimms, by and through counsel herewith, designates the following expert witnesses he reserves the right to call at trial:¹

Jason Capra, MSIV or Jason Koskien, D.O. or Valerie O'Brien, M.D. Malcolm Grow USAF Medical Center Andrews Air Force Base, Maryland 20762

The above listed experts were all involved in the admission, history, testing, examination, diagnosis and treatment of Mr. Mimms at Malcolm Grow USAF Medical Center. The records concerning that care were previously produced.

They examined plaintiff in December, 2005. They are expected to express opinions to a reasonable degree of medical certainty. They are expected to testify to the facts and opinions contained in the medical records, which have been produced. The subject matter of their testimony is expected to be their qualifications, background and experience including experience with patients presenting with similar history, conditions and symptoms as plaintiff, medicine, Makimba Mimms, his medical history, condition, diagnoses, prognosis, treatment options, risks and likely outcomes.

In terms of history they are expected to address the history given by the patient, the hospitalization at Malcolm Grow USAF Medical Center, the testing at Walter Reed Army Medical Center, the surgical biopsy at Bethesda Naval Medical Center, the Rhabdomyolysis and treatment therefore.

¹ All records mentioned are adopted and incorporated herein by reference. All opinions mentioned are expected to be to a reasonable degree of certainty.

They are expected to testify that the Rhabdomyolysis complained of and diagnosed as well as the treatment at Malcolm Grow, WRAMC and Bethesda Naval, surgical biopsy were necessary and caused by the Dec. 11, 2005 incident involved herein.

More specifically, they are expected to testify to the facts and opinions contained in the medical records previously produced for treatment of December 13 to 19, 2005. They will discuss and explain exercise induced Rhabdomyolysis, the need for admission, testing and treatment.

They are of the opinion that, in light of the patient's history, the physical and blood serum (CK) findings that his injuries, Rhabdomyolysis, and need for the treatment were caused by the incident at Manassas World Gym of Dec. 11, 2005. They are expected to testify that the pain, discolored urine, admission to the hospital, convalescence, administration of anesthetic medications (including morphine), lost time from work and limited duty were also necessary, appropriate and caused by the same incident.

LTC Mark E. Landau, M.D. Neurophysiologist Walter Reed Army Medical Center 6900 Georgia Avenue Washington, D.C. 20307 (202) 782-1661

Dr. Landau is an expert Medical Doctor with a specialty in the field of Neurophysiology. He is expected to testify to the facts and opinions contained in the medical records previously produced concerning the history, examinations, tests, EMGs, Nerve Conduction Studies, testing for Malignant Hyperthermia (negative), diagnoses and treatment of Mr. Mimms at Walter Reed Army Medical Center. He is of the opinion that the Rhabdomyolysis was caused by the exertion session at Manassas World Gym on December 11, 2005; no other superimposed factors such as the use of medications, heat or concurrent illness contributed to it; that the patient had persistent proximal lower extremity weakness secondary to that incident; he was advised to continue to avoid exertion. Dr. Landau would not recommend overseas deployment due to the Rhabdomyolysis.

John Capacchione, M.D.
Assistant Medical Director
Malignant Hyperthermia Biopsy Center
National Naval Medical Center
4301 Jones Bridge Road
Bethesda, Maryland 20814
(301) 295-3140

Dr. Capacchione is an expert Medical Doctor with a specialty in the field of Anesthesiology. He is expected to testify to the fact that it was necessary as a diagnostic test to perform a surgical muscle biopsy on Mr. Mimms left lower extremity at National Naval Medical Center on April 24, 2007. The patient was induced under general anesthesia for the procedure and scarring on the antereoexternal aspect of his left proximal lower extremity is secondary to that procedure. The patient was negative for Malignant Hyperthermia. See his letter report of May 8, 2007, previously produced.

Jeffrey H. Phillips, M.D. and/or Richard S. Meyer, M.D. Phillips & Green, M.D. 6404 C Seven Corners Place Falls Church, Virginia 22044 (703) 534-9680

Dr. Phillips and Dr. Meyer are licensed Medical Doctors, with a specialty in the field of Orthopaedic Surgery. Their *Curriculum Vitae* are attached.

They examined plaintiff in December, 2005 and through 2006 and may examine him again prior to trial. They are expected to express opinions to a reasonable degree of medical certainty. They are expected to testify to the facts and opinions contained in the medical records, which have been produced. The subject matter of their testimony is expected to be their qualifications, background and experience including experience with patients presenting with similar history, conditions and symptoms as plaintiff, medicine, Orthopaedic Surgery, Makimba Mimms, his medical history, condition, tests, test results, diagnoses, prognosis, treatment options, risks and likely outcomes.

In terms of history they are expected to address the history given by the patient, the hospitalization at Malcolm Grow USAF Medical Center, the testing at Walter Reed Army Medical Center, the surgical biopsy at Bethesda Naval Medical Center, the Rhabdomyolysis and treatment therefore.

At trial they are expected to testify that they reviewed the medical records and bills from the following:

- Medical records Malcolm Grow USAF Medical Center (Bates #1471 1575)
- Medical records Walter Reed Army Medical Center Dept. of Neurology (Bates # 1576 - 1628)
- Uniformed Services University of Health Sciences (Bates # 1628)
 (Bethesda Naval Medical Center)

They are expected to testify that the Rhabdomyolysis complained of and diagnosed as well as the treatment at Malcolm Grow, WRAMC and Bethesda Naval,

surgical biopsy were necessary and caused by the Dec. 11, 2005 incident involved herein at Manassas World Gym. They are familiar with the reasonable cost of medical and related services and are expected to testify that their bills and the itemized bill (Bates # 1637 – 1643) for the treatment are fair, reasonable, necessary and caused by the incident involved herein.

More specifically, they are expected to testify to the facts and opinions contained in the medical records previously produced for treatment of December 13, 2005 through to the present. They will discuss and explain exercise induced Rhabdomyolysis, the need for admission and testing, the need for the surgical biopsy of April 24, 2007, scarring secondary thereto, the permanent injury to the lower extremities bilaterally and the disability rating.

They are of the opinion that, in light of the patient's history, the physical and blood serum (CK or CPK) findings that his injuries, post acute muscle overexertion, Rhabdomyolysis, Lumbosacral spine strain, and strain of the bilateral quadriceps and need for the treatment were caused by the incident of Dec. 11, 2005. They are expected to testify that the pain, discolored urine, admission to the hospital, convalescence, administration of anesthetic medications (including morphine), surgery, postoperative convalescence, lost time from work and limited duty were also necessary, appropriate and caused by the same incident.

Priscilla M. Clarkson, Ph.D. Commonwealth College Goodell Building University of Massachusetts Amherst, Massachusetts 01003 (413) 548-9558

Dr. Clarkson has a Ph.D. in Exercise Science / Human Movement from the University of Massachusetts. She is Associate Dean of the School of Public Health and Health Sciences at Univ. of Massachusetts. Her *Curriculum Vitae* is attached.

She examined the following documents in connection with this case:

- Demand letter.
- Complaint filed in the Circuit Court.
- Medical records Malcolm Grow USAF Medical Center (Bates #1471 1575)
- Medical records Walter Reed Army Medical Center Dept. of Neurology (Bates # 1576 - 1628)

- Medical records & bills Phillips & Green, M.D. Orthopaedists with disability rating. (Bates # 1629 1636)
- Itemized bill Malcolm Grow Andrews AFB Med. Ctr. (Bates # 1637 1643)
- Loss of wages information (Bates # 1644 1648)
- Manassas World Gym Membership Agreement.
- Plaintiff's Answers to Interrogatories from Manassas World Gym.
- Plaintiff's Answers to Interrogatories from Ruthless Training.
- CrossFit Journal article.
- Stephanie Cooperman article.
- Excerpt from Ruthless website.
- "Uncle Rhabdo" drawing
- Deposition of plaintiff
- Deposition of Javier Lopez

Her letter report dated July 12, 2008 is attached and incorporated by reference herein. In general terms, she is expected to address the subjects of the effects of exercise on muscle tissue, exercise induced Rhabdomyolysis, CK levels in the blood, the physiological causes therefore, the risks, the pain, the discoloration found in urine, the effects on the kidneys, the need for medical treatment, the known protocols and methodologies for preventing and avoiding Rhabdomyolysis (including warning the client, assessing the client, reduced intensity of exercise for novices to that particular exercise, observation of the client, good hydration, monitoring of urine and the need to seek immediate medical care) and the standard of care expected of persons acting as personal trainers or physical trainers. She is expected to express he opinions to a reasonable degree of certainty.

Respectfully Submitted, MAKIMBA S. MIMMS By Counsel

Philip J. Walsh, Esq. VA Bar No. 13122
PHILIP J. WALSH & ASSOCIATES, P.C. 1420 Spring Hill Road, Suite 210
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Fax (202) 966-1212
Of-Counsel for plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served via facsimile and mailed, first class mail, postage prepaid, this 14th day of July, 2008 to:

Warren H. Britt, Esq. Anne C. Byrne, Esq. Law Offices of Warren H. Britt, P.C. 10800 Midlothian Tnpk., Suite105 Richmond, VA 23235 Fax (804) 378-4084

Douglas M. Coleman, Esq. Brian A. Scotti, Esq. Coleman & Ragland, PLC 602 Cameron St. Alexandria, VA 22314 Fax (703) 739-4210

Philip J. Walsh

7/12/08

Mr. Philip J. Walsh Philip J. Walsh & Associates, P.C. 1420 Spring Hill Road, Suite 210 McLean, Virginia 22102

Re: Review of Case No. CL 78584

Dear Mr. Walsh:

I am an exercise physiologist with a research specialty in skeletal muscle. I am currently a Distinguished Professor of Kinesiology and Dean of Commonwealth College, the honors college at the University of Massachusetts, Amherst. I have also served as Associate Dean of the School of Public Health and Health Sciences and Associate Dean for Research in the School of Nursing at the University of Massachusetts, Amherst. My laboratory has studied exercise-induced muscle damage in humans for about 25 years. We have widely published and presented our research findings. I served on the Massachusetts Governor's panel to investigate police training practices in Massachusetts after a cadet died of complications due to rhabdomyolysis following the first day of training at a police academy. Our panel's work changed police training practices so that rhabdomyolysis would be prevented. I have also published case studies of rhabdomyolysis where individuals were forced to overexert themselves by a personal trainer or coach and subsequently developed rhabdomyolysis and were hospitalized.

I have reviewed the depositions of Mr. Makimba S. Mimms and Mr. Javier Lopez, the CrossFit publications on rhabdomyolysis, and Mr. Mimms's medical records. On December 11th, Mr. Mimms participated in a training session at Manassas World Gym. This was his first time training under the direction of Mr. Lopez and using CrossFit exercises. Before the training session, Mr. Mimms informed Mr. Lopez that he had not resistance-exercised his legs prior to December 11th. Thus, 'Mr. Mimms would be considered a novice for these types of exercise. Mr. Mimms was not informed of the potential for CrossFit exercise to result in rhabdomyolysis.

Mr. Lopez instructed Mr. Mimms to rapidly perform 3 types of exercises that involved the leg muscles: burpees, thrusts, and squats. These exercises stress the quadriceps muscles by involving eccentric contractions that can produce muscle damage. During the training session, Mr. Mimms followed Mr. Lopez's the direction and encouragement to continue the exercises despite voicing his fatigue level and showing instability (by falling). As a former athlete, Mr. Mimms was familiar with following instructions by coaches and trainers, because these individuals are expected to have the knowledge and expertise to recognize when exercise is overly strenuous and to administer exercises that improve strength and fitness, are safe, and will not result in injury.

Two days after the exercise training session, Mr. Mimms experienced severe muscle pain and dark colored urine – both classic signs of rhabdomyolysis. The time frame is consistent with

rhabdomyolysis produced from the exercises performed on Sunday, December 11th. Creatine kinase (CK) activity in the blood was elevated to very high levels in the days following the exercise (e.g 156,144 U/L on December 15th). CK is a protein that is released from damaged skeletal muscle. Strenuous eccentric exercises can damage the membrane of muscle fibers and release muscle fiber contents (like proteins and electrolytes) into the bloodstream. The prolonged elevations of CK are also to be expected after exercises that were performed on December 11th. CK levels in the blood are measured as a surrogate for myoglobin (a protein similar to hemoglobin) that is also released from damaged skeletal muscle. Myoglobin is cleared from the blood stream by the kidneys. In high levels in the blood, myoglobin can spill over into the urine, turning the urine a brown color. This indicates that the kidneys are unable to process and clear the myoglobin. At such high levels, myoglobin can also precipitate in the kidneys and shut them down – this is called kidney failure and can be fatal. Staying well hydrated is very important if myoglobin levels in the blood could be expected to increase – such as in the days after the exercises that Mr. Mimms performed.

It is clear from CrossFit publications (CrossFit Journal issue 38, October 2005 CrossFit Induced Rhabdo, authored by Greg Glassman, President and Founder of CrossFit) and CrossFit Journal issue 33, May 2005 Killer Workouts, authored by Eugene Allen) that CrossFit was aware that their exercise regimens could induce rhabdomyolysis. The October 2005 article described 5 cases of rhabdomyolysis that resulted from participation in a CrossFit training regimen. These incidents occurred in response to a first or section CrossFit workout; the clients were not accustomed to CrossFit training. Furthermore, this article stated that "We now find ourselves obligated not just to explain CrossFit's potency but to warn of its potential lethality." The article also mentions that rhabdomyolysis resulted from sessions of 20 minutes or less and that the victims were exposed to too much work in too short of a time frame. Hence, it was recommended that the pace and power output should be kept low for beginners. Given this:

- Mr. Mimms should have been warned about the possibility of developing rhabdomyolysis and its potentially fatal outcome.
- O An assessment of a Mr. Mimm's fitness to participate in such a stressful exercise session should have been made prior to the training session.
- O Because muscle damage is experienced when exercises are unaccustomed, care should have been taken to ensure that, as a novice to these exercises, Mr. Mimms did not overexert himself. This care should have been manifested by:
 - reducing the intensity of the work out compared to what would be recommended to experienced resistance exercisers. Reducing the intensity means to have fewer repetitions and sets and to include adequate rest periods.
 - observing Mr. Mimms for signs of undue fatigue, such as falling and instability, at which time the exercise session should have been stopped.
 - informing Mr. Mimms to maintain good hydration in days (up to 5 days) following the session and to monitor urine color (providing instructions to go to the emergency room at the first sign of discolored urine).

Mr. Mimms was taking a multivitamin/mineral supplement with added amino acids and other ingredients, none of which have been associated with exertional rhabdomyolysis.

Mr. Lopez instructed and encouraged Mr. Mimms to perform a series of leg exercises continuously for about 20 minutes. These exercises emphasize eccentric contractions that are known to produce rhabdomyolysis, especially in those unaccustomed to these exercises. Adequate precautions to prevent such a condition from occurring were not taken.

Sincerely,

Priscilla M. Clarkson, PhD

Distinguished Professor of Kinesiology

Dean, Commonwealth College

ATTACHMENT

Leading sports medicine and sport science organizations recommend that exercises be progressive, that they build up over time to maximal capacity, and that rest intervals be included between exercise repetitions.

The Army Field Manual (FM 21-20) covers the army regulations for physical fitness. See http://armynursecorps.amedd.army.mil/army101/fm21 20.pdf. When designing physical training sessions, the instructor must adhere to the guidelines in this manual and complete a 'risk assessment' profile for the particular exercise. This ensures that instructors consider all possible injuries/risks and provide alternative plans and exercises to minimize risk and prevent injury. The most important thing is to know that this manual MUST be consulted and enlisted soldiers are required to read it and memorize guidelines associated with physical training. A quote from this manual states "Recovery is also important within a workout. The recovery time between different exercises and sets depends, in part, on the intensity of the workout. Normally, the recovery time between sets should be 30 to 180 seconds." ... "The soldier should use very light weights during the first week (the preparatory phase) which includes the first two to three workouts. This is very important, because the beginner must concentrate at first on learning the proper form for each exercise. Using light weights also helps minimize muscle soreness and decreases the likelihood of injury to the muscles, joints, and ligaments. During the second week, he should use progressively heavier weights. By the end of the second week (4 to 6 workouts), he should know how much weight on each exercise will allow him to do 8 to 12 repetitions to muscle failure. If he can do only seven repetitions of an exercise, the weight must be reduced; if he can do more than 12, the weight should be increased."

Below is an excerpt from the National Strength and Conditioning Association's (NSCA) book, Essentials of Strength Training and Conditioning, 2nd ed. These excerpts come from the section on Resistance Training and Designing a Program, and discuss factors that influence number and types of exercises and length/amounts of workouts, including type of sport, training status, testing/evaluation, goals, exercise experience, season within the sport, and outside training.

"The training status of athletes affects the volume they will be able to tolerate. It is appropriate for an athlete to perform only one or two sets as a beginner and add sets as he or she becomes better trained. As the athlete adapts to a consistent and well-designed program, more sets can gradually be added to match the guidelines associated with the given primary goal." (pg. 418)

"The length of the rest period between sets and exercises is highly dependent on the goal of training, the relative load lifted, and the athlete's training status (if the athlete is not in good physical condition, rest periods initially may need to be longer than typically assigned)." (pg. 420)

Typical rest period length assignments based on the training goal: (pg 421)

-Strength:

2-5 min

-Power: single-effort event 2-5 min

multiple-effort event 2-5 min

-Hypertrophy:

30s-1.5 min

-Muscle endurance:

less than or equal to 30s

The NSCA also published the media release entitled *Practice Wait Training While Weight Training:* Study finds that longer rest periods between weight lifting sets enables additional repetitions on April 5th, 2005. An except from this release states "According to a recent study published by the National Strength and Conditioning Association (NSCA) in *The Journal of Strength and Conditioning Research* (December 2004), rest periods of three to five minutes are essential to achieve the full benefit of resistance exercise for recreational lifters."

The American College of Sports Medicine position stand, *Progression Models In Resistance Training For Healthy Adults* (2002) states that for increasing muscle hypertrophy: "It is recommended that 1- to 2-min rest periods be used in novice and intermediate training programs. For advanced training, rest period length should correspond to the goals of each exercise or the training phase such that 2- to 3-min rest periods may be used with heavy loading for core exercises and 1- to 2-min rest periods may be used for all other exercises of moderate to moderately high intensity" and for muscular endurance "It is recommended that short rest periods be used for endurance training (i.e., 1–2 min for high-repetition sets (15–20 repetitions or more), and less than 1 min for moderate (10–15 repetitions) sets."