



Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street, Suite 1500
Lexington, KY 40507
p: 859.255.8581 f: 859.231.0851
www.sturgillturner.com

Bryan H. Beauman
Member
bbeauman@sturgillturner.com

February 8, 2023

Mr. Charles Scheeler
Chair of the HISA Board of Directors
Via email only

RE: Review of HISA Rule 2276, the 2022 Lukas Classic Stakes, and Hot Rod Charlie

Mr. Scheeler:

Please accept this report in advance of the HISA Board of Directors meeting of February 22, 2023 for consideration of any action the Board may wish to take.

HISA has asked Sturgill, Turner, Barker & Moloney, PLLC, outside enforcement counsel to HISA, to review the investigation and application of HISA Rule 2276 (Horseshoes) to the 2022 Lukas Classic Stakes and the Hot Rod Charlie matter, and to recommend any further steps the Board should take. Pursuant to a Voluntary Implementation Agreement between HISA and the Kentucky Horse Racing Commission, HISA previously designated KHRC officials to conduct an initial investigation of the matter.

We conclude that the stewards had a reasonable basis to find that the horseshoes worn by Hot Rod Charlie during the 2022 Lukas Classic did not violate HISA Rule 2276. As a result, we find no grounds to believe the stewards' conclusion was clearly erroneous or unsupported by the evidence. We recommend that the Board take no further action in this matter.

SCOPE OF OUR REVIEW

The specific purpose of our review was to analyze the initial investigation by the stewards and determine if any grounds exist for the HISA Board to conduct further action in this matter.

Our review is based on the following materials:

- The Equibase race result chart

- Video footage of the race from NBC Sports publicly available on its YouTube Channel
- Photographs obtained from Jamie Newell, Jenny Doyle, and Matt Wooley
- Materials received from the stewards' initial investigation including:
 - Recordings of statements from Dean Bault, Hot Rod Charlie's farrier
 - "Report of actions taken" composed by the stewards
 - HISA "Investigation Report" completed by the stewards
 - Various photographs of the race the stewards and local officials obtained from Coady Photography at Churchill Downs
- A physical examination of the horseshoes Hot Rod Charlie wore during the Lukas Classic which were received by us from the stewards
- "Motion for Reconsideration" on behalf of the interests of Rich Strike and supporting exhibits and materials
- "Supplemental Motion for Reconsideration" from the interests of Rich Strike with additional supporting exhibits and materials
- A physical examination of other horseshoes as exemplars, including horseshoes with a 2 mm and 4 mm toe grab

BACKGROUND INFORMATION

The 2022 Lukas Classic Stakes ran on October 1, 2022, at Churchill Downs. Hot Rod Charlie won the race by a head over Rich Strike.¹ In the days following the race, the interests of Rich Strike closely observed the media's coverage of the race including photographs of the horses' approach to the finish wire, which led to allegations that Hot Rod Charlie's shoes were equipped with "toe grabs."

¹ The Equibase chart is publicly available at:
<https://www.equibase.com/premium/eqbPDFChartPlus.cfm?RACE=10&BorP=P&TID=CD&CTRY=USA&DT=10/01/2022&DAY=D&STYLE=EQB>

In light of the allegations, on October 5, 2022, KHRC officials began their investigation with an examination of Hot Rod Charlie and inspection of his horseshoes. A “Report of actions taken” prepared by chief state steward Barbara Borden provides the details of their actions and is included as Attachment A. Collectively, Dr. Bruce Howard, Dr. Molly Metz, state steward Brooks Becraft, and chief state steward Borden examined the evidence in the matter, and all concluded that Hot Rod Charlie’s shoes were not in violation of Rule 2276. A written Investigation Report signed by chief state steward Borden is included as Attachment B.

On October 10, 2022, under the supervision of the inspecting officials, a farrier removed the horseshoes from Hot Rod Charlie. The shoes have been kept in a secure manner since that date. There is no allegation nor any reason to suspect the horseshoes that have been examined are not those that Hot Rod Charlie wore in the Lukas Classic. Therefore, we consider the inspection of the shoes to be dispositive to our analysis of this matter.

On October 18, 2022, the interests of Rich Strike were informed of the conclusions of the HISA initial investigation and provided copies of the “Report of actions taken” and the Investigation Report. Three days later, Mr. Rick Dawson requested a further review. On October 28, 2022, Mr. Barry Hunter, attorney for the interests of Rich Strike, was informed of our assignment to analyze the initial investigation by the stewards and determine if any grounds exist for the HISA Board to conduct further action in this matter.

On November 7, 2022, Mr. Hunter requested we obtain copies of high-resolution digital images from the race taken by various media members which we accomplished by November 17, 2022. Access to these images was provided to Mr. Hunter on November 18, 2022.

On November 28, 2022, we provided the interests of Rich Strike, including attorney Barry Hunter and his team, the opportunity to conduct a supervised inspection of Hot Rod Charlie’s horseshoes which gave them the ability to physically inspect the horseshoes. This inspection was conducted in my presence.

On December 2, 2022, Mr. Hunter submitted a written statement to us in the form of a Motion for Reconsideration setting out in detail the position of the interests of Rich Strike.²

On December 9, 2023, we granted the request from Mr. Hunter for a more detailed inspection of Hot Rod Charlie’s horseshoes which included photographs

² The Motion for Reconsideration is included as Attachment C.

taken of the shoes after being removed from the evidence bags. This inspection and the taking of the photographs was conducted in the presence of attorneys Bryan Beauman and Rebecca Price.

On December 19, 2022, Mr. Hunter submitted a supplemental Motion for Reconsideration including additional analysis based on his colleagues' photographs of the Hot Rod Charlie horseshoes.³

The February 22, 2023 HISA Board meeting is the next available Board meeting for your consideration of this matter.

CONTROLLING RULE 2276

HISA Rule 2276 address horseshoes and states in full:

- (a) Except for full rims 2 mm or less from the ground surface of the Horseshoe, traction devices are prohibited on forelimb and hindlimb Horseshoes during racing and training on dirt or synthetic racing tracks.
- (b) Traction devices are prohibited on forelimb and hindlimb Horseshoes during training and racing on the turf.
- (c) Traction devices include but are not limited to rims, toe grabs, bends, jar calks and stickers.

On July 29, 2022, HISA announced that this Rule would not be enforced for horses racing on dirt surfaces with traction devices of a full outer rim shoe or a toe grab up to 4 mm in height on the hindlegs. Because of widespread supply chain shortages of horseshoes compliant with the Rule, farriers across the country ground down horseshoes equipped with toe grabs and other traction devices to make them compliant with the Rule. Stewards interpreted Rule 2276 as permissive of horseshoes with ground-down toe grabs or traction devices so long as the resulting horseshoe did not contain material that could be considered a traction device.

By statute, HISA rules preempt “any provision of State law or regulation with respect to matters within the jurisdiction of the Authority under this chapter[.]” 15 U.S.C. § 3054(b). Accordingly, any Kentucky law or KHRC regulation contrary to HISA Rule 2276 is preempted.

³ The supplemental Motion for Reconsideration is included as Attachment D.

CONCLUSION

The officials who conducted the initial inspection of the Hot Rod Charlie horseshoes concluded the shoes did not violate Rule 2276. We agree that the evidence in the record supports their findings, for five reasons.

First, the shoes worn on the front legs revealed evidence of a previously existing toe grab. Farrier Dean Bault explained in his interview with the stewards that he had ground down the toe grab to comply with HISA's rules. Our independent inspection of the shoes supports Bault's statement that he worked to remove the toe grab. The horseshoes are made of aluminum, and the toe grab was made of steel. A visual inspection of other horseshoes with existing toe grabs reveals a similar distinction between the two materials. The Hot Rod Charlie shoes contain very little remaining steel from the toe grab.

Second, when we compared Hot Rod Charlie's horseshoes to shoes containing a 2 mm or 4 mm toe grab, we discerned a clear distinction between the height or existence of the remnant of the toe grab on Hot Rod Charlie's shoes and the shoes equipped with toe grabs. This further supports Bault's explanation that he ground down the toe grab.

To illustrate, compare the photographs on the following page:

(1) Hot Rod Charlie's shoe:



(2) a 4 mm toe grab:



(3) a 2 mm toe grab:



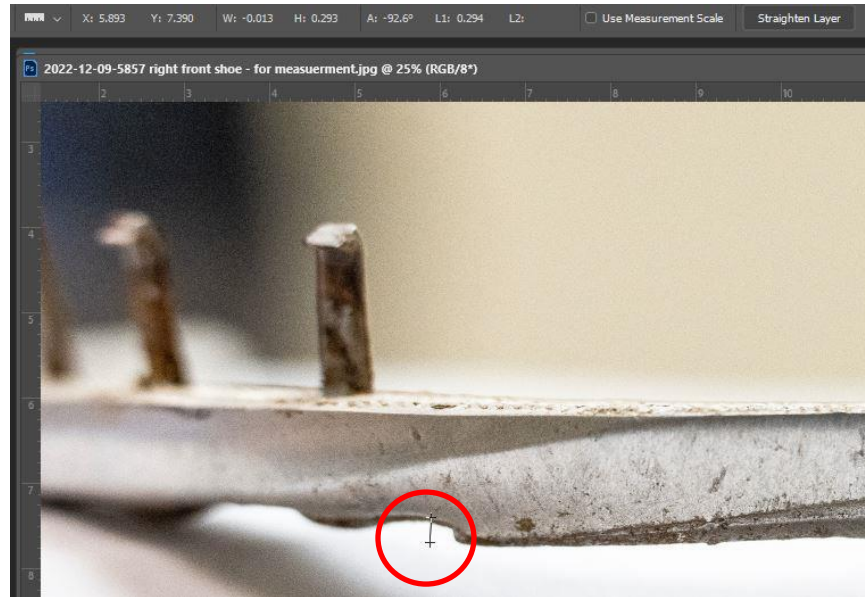
Third, the initial investigation did not focus on whether a toe grab once existed on Hot Rod Charlie's shoes. Instead, the relevant inquiry was whether Hot Rod Charlie's shoes contained a traction device. The officials examined the shoes and concluded that the farrier had ground-down the previously existing toe grab on the shoes sufficiently so that the shoes no longer contained a traction device as defined in Rule 2276.

We conducted a tactile examination of the shoes and felt no palpable traction device on the shoes. First, we observed a noticeable difference between Hot Rod Charlie's shoes compared to horseshoes with traction devices. Hot Rod Charlie's shoes felt smooth with no disruptive device jutting out from the surface. Comparatively, when feeling a horseshoe with a traction device, like those shown in the included photos, the examiner would feel a noticeable protrusion of a traction device likely of a different material. As Hot Rod Charlie's shoes had been sufficiently ground down, enforcement counsel could not feel the presence of any attachment to the horseshoes.

Additionally, had the horseshoes not been ground down and were left with a traction device, the traction device would have prevented the horseshoe from running smoothly over a flat surface. This traction would allow the horse to have increased grip on the racing surface. However, when enforcement counsel ran Hot Rod Charlie's shoes over a smooth surface, no disruption occurred. This provides enforcement counsel confidence that whatever traction device may have existed at one time had been sufficiently ground down so that such devices had been eliminated from the horseshoe.

Fourth, in the materials submitted by Rich Strike's interests, including the photographs with measurements, the remnants of the toe grab were measured from the highest point of the shoe adjacent to the area where the toe grab was originally located on the shoe.⁴ The measurements were not made from the ground surface of the shoe. The horseshoes on Hot Rod Charlie were a Kerckhaert Tradition XT model, commonly used for horses in training. According to the farrier, the shoes were placed on the horse on August 30, 2022. Typical "wear and tear" to the shoes is noticeable. A proper measurement of the shoe should include the lowest point of the shoe's ground surface, not the bottom of the shoe's highest point. The highlight in the following photograph indicates the point from which Rich Strike's interests measured the shoe:

⁴ See Attachment D at page 54.



The officials did not believe the state of the shoe constituted a toe grab or a traction device. We agree.

Fifth, Rule 2276 does not specify how to measure a horseshoe for purposes of compliance with the Rule. Instead, the Rule prohibits traction devices. The officials inspecting the shoes focused on whether any remnants of a toe grab constituted a “traction device” and concluded that the remaining material on Hot Rod Charlie’s shoes did not constitute a traction device. An inspection of Hot Rod Charlie’s horseshoes demonstrates that the officials had ample evidence to conclude that from the front to back of the shoe, insufficient material protrudes from the shoe to generate traction on the racing surface. A lateral observation of the shoe does show a minute rise above the cavity of the shoe running between the shoe’s rims where the nails would be inserted. However, the height of the lateral rise is insignificant, and the inspecting officials reasonably concluded that no device remained on the shoe that would constitute a traction device in violation of Rule 2276. Our review of the matter indicates that the evidence supports these findings.

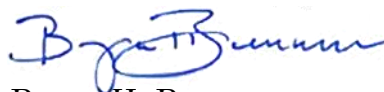
RECOMMENDATIONS

1. The evidence in the record supports the initial investigators' conclusion that Hot Rod Charlie's shoes complied with Rule 2276, and therefore we do not believe that grounds exist to find that the investigators' determination was clearly erroneous.

2. The supply chain issues delaying widespread availability of HISA compliant horseshoes appears to be resolved, and this situation is unlikely to recur. However, the HISA Board may determine that further clarification of Rule 2276 is necessary to prevent future uncertainty in the interpretation of the Rule. In its current iteration, Rule 2276 does not require reviewing officials to measure toe grabs, or the remnants of a ground-down toe grab. The Rule prohibits "traction devices," which include toe grabs, among other items. A shoe with a full rim height of 2 mm or less is not considered a traction device. The Rule provides no further definition of what is *not* a traction device, and does not specify how stewards should interpret the rule when a shoe that was originally equipped with a toe grab has had the toe grab removed.

Sincerely,

STURGILL, TURNER, BARKER & MOLONEY,
PLLC



Bryan H. Beauman

cc: Doug O'Neill, for the interests of Hot Rod Charlie
Attorney Barry Hunter, for the interests of Rich Strike
Barbara Borden and Jennifer Wolsing, Kentucky Horse Racing Commission

Attachment A

Report of actions taken in response to allegation of violation of HISA Rule #2276 at Churchill Downs on Saturday, October 1, 2022

Tuesday October 4, 2022

On Tuesday, October 4, 2022, while in the Keeneland stewards' office I received a call from trainer Eric Reed. Reed informed me that he had been sent a photo (anonymously) that appeared to show a toe grab on the left front foot of Hot Rod Charlie, the winner of race 10 at Churchill Downs on October 1, 2022. He also told me that the person that sent the photo indicated that it would also be sent (or had been sent) to several media outlets. He forwarded four photos to me by text and asked me to look into the situation.

Fellow steward Brooks Becraft and I looked at the photos and then discussed how to proceed.

At 1:45 p.m. we contacted KHRC Equine Medical Director Dr. Bruce Howard and asked him to head to Keeneland, that we wanted him to look at the horse Hot Rod Charlie after we confirmed the horses' location.

At 2:00 p.m. I contacted Doug O'Neill by phone and found out that the horse was located at Keeneland in the "Calumet" barn on Rice Road. I instructed O'Neill, who was in California, to have someone at that barn in 5 minutes and that we were going to examine the horse Hot Rod Charlie. I did not disclose the nature of our examination to him at that time.

Dr. Bruce Howard located and identified Hot Rod Charlie, examined his shoes, and reported back to me and Becraft that the shoes, which appeared to have been on the horse for quite some time, in his opinion, were free from any traction device and complied with the HISA shoe rule.

I then called Doug O'Neill back and asked him for the most recent farrier invoice for Hot Rod Charlie and told him of the photos that I had received. He sent the invoice and the contact information for Dean Balut, his farrier in California that had been flown to Kentucky to shoe the horse a month before the race in question.

At 4:00 p.m. I contacted Kevin Coady of Coady Photography (Churchill Downs track photographer) and requested any pictures of Hot Rod Charlie that they had taken prior to, during, and after race 10 on October 1, 2022. I did not disclose the reason for my request and the news story had not yet surfaced. I received the photos via email between 7:30 and 8:15 p.m.

Wednesday, October 5, 2022

At 9:00 a.m. the following people met at the O'Neill barn to inspect the shoes on Hot Rod Charlie;

Dr. Bruce Howard, Dr. Molly Metz (KHRC vet), Brooks Becraft (KHRC steward) and Arthur Tearl (Kentucky paddock blacksmith).

Dr. Howard acknowledged that the shoes were the same ones that he had seen the previous day. Numerous photos were taken by Howard, Metz and Becraft.

Thursday, October 6, 2022

The photos from all sources and the farrier invoice provided by O'Neill were reviewed by me and steward Ronald Herbstreit at Keeneland.

Friday, October 7, 2022

Keeneland stewards Borden, Becraft and Herbstreit conducted a telephone interview with farrier Dean Balut.

Saturday, October 8, 2022

At 6:00 p.m. a brief summary of the Keeneland stewards' investigation was sent to HISA officials

Monday, October 10, 2022

Farrier Dean Balut was at Keeneland to re-shoe Hot Rod Charlie. KHRC investigators Paul Brooker and Shannon Garner were present to witness the removal of the shoes and to collect them to hold in evidence.

Tuesday, October 11, 2022

I sent all photos and evidence in my possession to HISA officials

Wednesday, October 12, 2022

Paul Brooker delivered the shoes, sealed in evidence bags and with chain of custody documented, to me at Keeneland.

Thursday, October 13, 2022

At 11:30 a.m. I released the shoes, still sealed in evidence bags and with chain of custody documented, to representative Meaghan Reed of Sturgill, Turner, Barker & Moloney, PLLC to deliver to HISA officials.

Respectfully submitted on


October 13, 2022



Barbara L. Borden

KHRC Chief Steward

Attachment B

HISA Action Number:	Incident Date (10/01/2022):
State Tracking Number:	Date Reported:(10/04/2022):
Track HISA ID:	Track Name: Churchill Downs
Involving	
HISA ID:	
Name:	
INVESTIGATION INFORMATION	
Relevant Rule Number(s) and Brief Description of Investigation: HISA Rule #2276 Horseshoes Investigate allegation made by connections of Rich Strike of non-compliant front shoes worn by Hot Rod Charlie in Race 10 at Churchill Downs on October 1, 2022	
If Applicable...	
Race: 10	Horse Name: Hot Rod Charlie Horse HISA ID: H000032561
<u>Summary of Investigation (attach additional pages as necessary):</u>	
10-4-22 – Inspected and photographed horse at Keeneland (KHRC Equine Medical Director Dr. Bruce Howard) – at the request of stewards Requested and received relevant invoice for most recent shoeing of HRC from Doug O'Neill Requested and received numerous photos taken by Coady Photography (CD track photographer) that included HRC at CD on 10-1-22 10-5-22 – Additional inspection of horse at Keeneland (Dr. Bruce Howard, Dr. Molly Metz, Brooks Becraft and Arthur Tearl – Ky. paddock blacksmith). Additional photos taken. 10-6-22 – Review of evidence collected 10-7-22 – Interviewed farrier Dean Balut regarding the most recent shoeing of HRC that took place at Keeneland on 8-30-22 Conclusion and Decision: After a thorough review of numerous photos taken both at CD on 10-1-22 and also at Keeneland on 10-4-22 and 10-5-22, the in-person inspections of HRC and the interview of farrier Dean Balut, the stewards have determined that there is sufficient evidence to confirm that HRC raced in compliance with HISA Rule #2276 at Churchill Downs on 10-1-22.	
Witnesses	
Name:	HISA ID:
Report by Name, HISA ID, Signature and Date  P000017212 10-8-22	

Attachment C

HORSERACING INTEGRITY AND SAFETY AUTHORITY

www.hisaus.org

MOTION FOR RECONSIDERATION BY RED TR RACING: RE RULE 2276 CHALLENGE TO HOT ROD CHARLIE'S RUN IN THE LUKAS CLASSIC

Movant, RED TR Racing LLC, as owner of Rich Strike ("Movant"), respectfully submits this Motion for Reconsideration to Bryan Beaman, Esq., HISA Enforcement Counsel. Movant is submitting this Motion pursuant to the procedures established by HISA General Counsel, John Roach, Esq., and by Mr. Beaman for addressing Movant's protest of HISA's failure to enforce its Rule 2276 with respect to the participation of HOT ROD CHARLIE ("HRC") in Race No. 10 at Churchill Downs on October 1, 2022 ("the Lukas Classic Race"). HISA Rule 2276, by its plain terms, prohibits horses from wearing toe grabs of any length on front limb shoes for races on dirt or synthetic tracks. HRC plainly ran in violation of that Rule at the Lukas Classic Race, and the Horse should have been disqualified. As stated below, Movant reserves the right to supplement this Motion after it has been afforded the ability to examine the shoes allegedly worn by HRC during the Lukas Classic Race, which shoes are now in an evidence bag in HISA's custody.

Procedural Background

The Lukas Classic Race was run as race 10 at Churchill Downs on October 1, 2022. HRC won the race; Rich Strike placed second by a nose.

On October 4, 2022, Eric Reed, Rich Strike's trainer, received photographs showing toe grabs on HRC's front shoes. Mr. Reed promptly reported this information to Barbara Borden, Chief Steward of the Kentucky Horse Racing Commission ("KHRC"). On October 8, 2022, after a brief investigation, Ms. Borden, together with two other KHRC Stewards, determined that "there is sufficient evidence to confirm that HRC raced in compliance with HISA Rule #2276 at Churchill

Downs on 10-1-22.” On October 18, 2022, HISA counsel John Forgy first advised Rich Strike’s owner of this finding, along with HISA’s conclusion that it agreed with this finding by the KHRC Stewards.

On October 26, 2022, Movant timely appealed the foregoing HISA finding pursuant to ¹Rule 8350 [Exhibit A.] Thereafter, HISA’s general Counsel, John Roach, informed the undersigned that HISA would handle this appeal as a motion for reconsideration of HISA’s findings and that HISA’s Enforcement Counsel, Bryan Beauman, would consider evidence to be submitted to Mr. Beauman by Movant on the question of whether HISA should reconsider its findings.

Pursuant to procedures agreed to by undersigned and by Mr. Beauman, Movant is now submitting its preliminary showing in support of reconsideration. This showing is of necessity preliminary because Movant has yet to be provided the opportunity to inspect the shoes allegedly worn by HRC during the Lukas Classic Race, which are now in HISA’s custody. Moreover, Movant has not been given the opportunity to confront the testimony that HRC’s farrier gave to the KHRC Stewards about the condition of HRC’s shoes.

Movant believes that the photographic evidence submitted along with this Motion is conclusive on the question of whether a violation of Rule 2276 occurred *on October 1, 2022* and that this *October 1, 2022* evidence conclusively refutes any inferences that the Stewards may have drawn from the farrier’s testimony about the condition of the shoes *on August 31, 2022* or from their inspection of the shoes *on and after October 4, 2022*. Nonetheless, inspection of the shoes in the evidence bag (which presumably reflects the condition of the shoes as they appeared to the

¹ HISA has not indicated why it found that HRC’s shoes complied with HISA Rule 2276 notwithstanding the photographic evidence to the contrary. To the extent that the finding was based on any doubts as to the reliability of the photographic evidence available to HISA at the time of its investigation, the attached report by Movant’s forensic photography expert should resolve any such doubts.

KHRC investigators on and after October 4) may be necessary to determine whether the condition of the shoes was the same on race day as on October 4 and thereafter. Thus, Movant reserves the right to have its forensic photography expert supplement the attached report as well as to submit additional reports by other experts.

Photographic Evidence

HISA Rule 2276 states, in pertinent part, that: “[e]xcept for full rims 2 millimeters or less from the ground surface of the Horseshoe, traction devices [including toe grabs] are prohibited on forelimb... Horseshoes during racing and training on dirt or synthetic tracks.”² Thus, the HISA Rule, by its plain terms, prohibits toe grabs that protrude by *any* length below the ground surface of the Horseshoe during racing on dirt or synthetic tracks.

As set forth in the attached Preliminary Report of Frank Becker [Exhibit B],³ there can be no dispute but that HRC was wearing shoes with toe grabs protruding below the ground surface of the Horseshoe during the Lukas Classic Race. ***Thirty different photographs taken by four separate photographers at various points in the race clearly reveal this fact.*** Mr. Becker’s forensic examination of the photographic evidence further reveals that the toe grabs extended no less than 3 mm below the ground surface of HRC’s forelimb Horseshoes.

In conclusion, Movant submits that the evidence submitted with this Motion is conclusive on the issue of whether a violation of HISA Rule 2276 should have been found by HISA. Nonetheless if HISA believes that the photographic evidence is not conclusive on this matter, Movant requests that it be permitted to submit additional evidence, as well as testimony at a hearing at which Movant can confront the farrier testimony presented by HRC’s interests to the

² The Rule has been modified to permit toe grabs up to 4 mm on hindlimb Horseshoes.

³ Again, the Report is preliminary because Mr. Becker has not yet been given access to examine the shoes allegedly worn by HRC during the Lukas Classic Race.

KHRC Stewards, after the shoes allegedly worn by HRC at the Lukas Classic Race have been examined.

Respectfully submitted,

/s/ Barry D. Hunter

Frost Brown Todd LLC

250 West Main Street, Suite 2800

Lexington, Kentucky 40507

Tel.: (859) 231-0000

Fax: (859) 231-0011

bhunter@fbtlaw.com

Counsel for RED TR Racing LLC,

Richard Dawson, Member/Manger (owner Rich Strike)

EXHIBIT A

Horseracing Integrity and Safety Authority

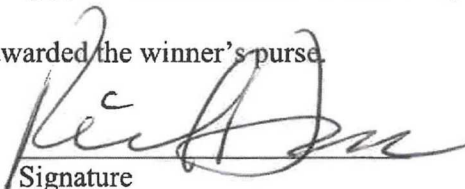
www.hisaus.org

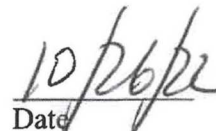
Notice of Appeal to the Board Under HISA Rule #8350

Name: RED TR Racing LLC, Richard Dawson, Member/Manager (owner Rich Strike)
Address: c/o attorney Barry D. Hunter
Frost Brown Todd, LLC
2800 Lexington Financial Center
Lexington, KY 40507
Telephone #: 859-244-3214
Email: bhunter@fbtlaw.com
Track: Churchill Downs
Date of Infraction: October 1, 2022

I hereby appeal the Order/Ruling of the KHRC Stewards, Borden, Becraft and Herbstreit issued on October 8, 2022* regarding the front shoes worn by Hot Rod Charlie in Race 10 at Churchill Downs on October 1, 2022 for the following reasons: The photographs taken by Coady Photography (Churchill Downs track photographer) and numerous others (attached) reveal that Hot Rod Charlie was wearing shoes with toe grabs in violation of HISA Rule #2276. Moreover, the farrier that shod Hot Rod Charlie before the race has admitted that he put shoes with toe grabs on the horse's front hooves. Accordingly, Hot Rod Charlie should be disqualified and Rich Strike should be declared the winner and awarded the winner's purse.

Richard Dawson
c/o Barry Hunter
Frost Brown Todd, LLC
2800 Lexington Financial Center
Lexington, KY 40507


Signature


Date

*Notice to Appellant
On October 18, 2022



Red



Photo: Kentucky Horse Racing Commission / Eclipse Sportswire

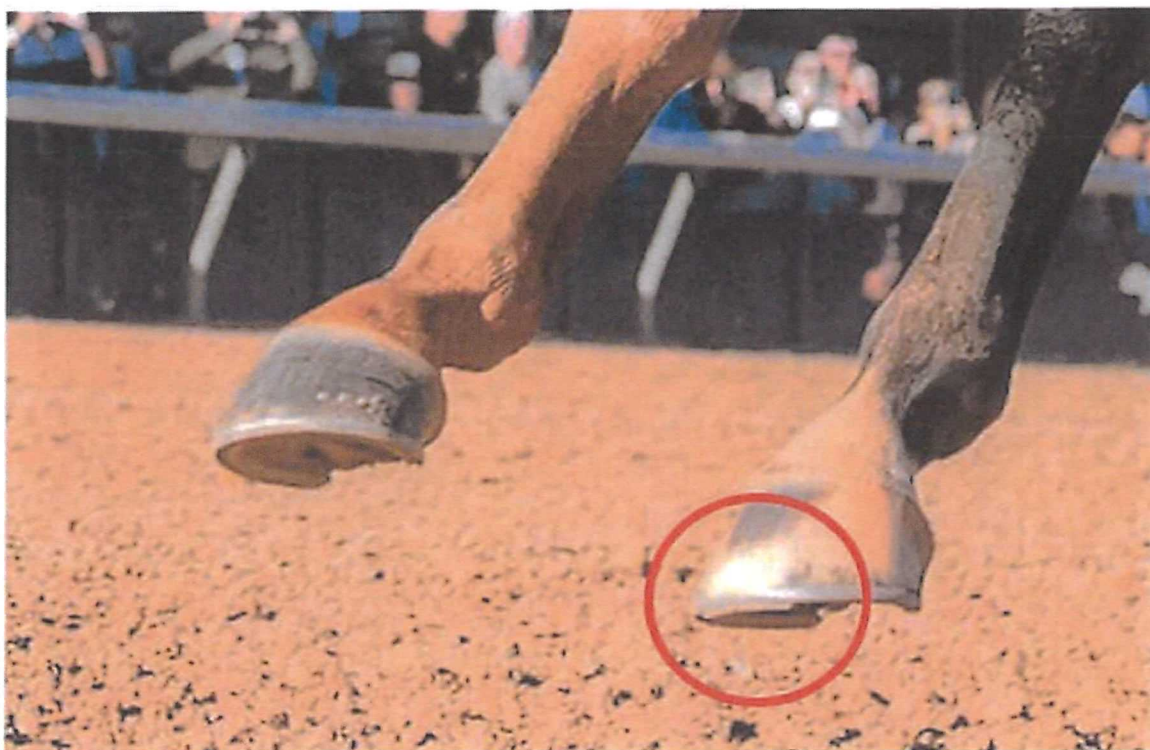
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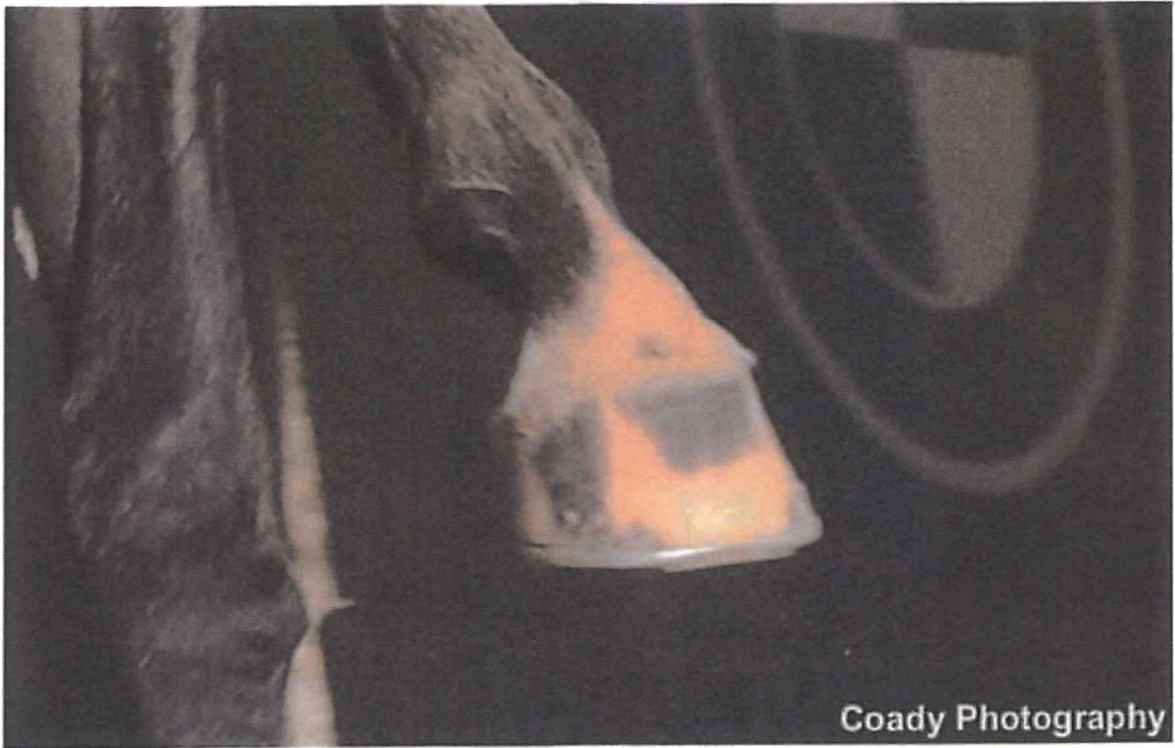
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EXHIBIT B

218 Sycamore Drive
Lexington, Kentucky 40502
859-420-9561
859-266-2190 fax
frank@beckerattorney.com

FRANK T BECKER
Attorney

PRELIMINARY REPORT

December 1, 2022

INTRODUCTION / ENGAGEMENT

I was engaged by attorney Barry Hunter of Frost Brown Todd to review photographs of the thoroughbred horse HOT ROD CHARLIE in the Grade 2 Stakes Race called the Lukas Classic, run at Churchill Downs on October 1, 2022. I understand that HOT ROD CHARLIE finished first in that race. RICH STRIKE finished second. I understand that Mr. Hunter represents the owner of RICH STRIKE, who believes that HOT ROD CHARLIE may have had “toe grabs” on the shoes on his front hooves. Racing with toe grabs and similar devices on front hooves are prohibited under HISA and various stake racing regulations.

I reviewed more than 50 separate photographs taken by four photographers over the course of the Lukas Classic race – capturing HOT ROD CHARLIE’S image at a number of discrete points of the race. Most of these photographs captured an image of the horse’s front hooves. As set forth below, I enhanced these images to make them clearer, and I am able to conclude that **every one of these enhanced photographs that could have shown the presence or absence of a toe grab do in fact reveal the presence of toe grabs on HOT ROD CHARLIE’S front hooves. That is, separate photographs taken by four different photographers confirm the presence of a toe grab on the shoes on HOT ROD CHARLIE’s front hooves at the Lukas Classic race at Churchill Downs on October 1, 2022.**

PERSONAL BACKGROUND AND CREDENTIALS

I have had a career in both law and photography. My legal career began in 1979, after graduating first in my class from the University of Kentucky College of Law. Although my practice was initially varied, after a few years my practice largely involved equine matter, both transactions and litigation, including representing clients in racing matters. I served as an Adjunct Professor of Law at the University of Kentucky College of Law, where I taught Equine Law. I am the author of *Equine Law* (an academic treatise on the subject)t, The Equine Case Law Digest, and several published articles, including those on Equine

Law. I spoke annually at the University of Kentucky's National Conference on Equine Law, where I was also on the Planning Committee. I am currently largely retired from that practice, although I am actively engaged as an Arbitrator on the Commercial Arbitration Panel of the American Arbitration Association.

My photography career commenced in approximately 2001, and coincided with my legal career for approximately ten years, under the name "The Time Photography." I concentrated on portrait and wedding photography, as well as commercial photography largely involving travel. For example, I was engaged by an adventure travel company to photograph an adventure travel cruise in Greenland and Iceland, to obtain photographs for use in brochures and other promotional material. I have won several photography awards and had numerous photographs published. I have extensive experience with digital photography and the processing of photographic images.

METHODOLOGY AND TECHNIQUE EMPLOYED

As noted, I was tasked to review photographs of HOT ROD CHARLIE to determine if the photographs showed the presence of toe grabs on the front hooves. Initially I was provided a few photographs from various photographers who photographed the race, that had been provided to HISA in the initial review. These photographs were in "jpeg" format and of medium resolution. Even then, they appeared to reveal the presence of toe grabs.

However, to be able to determine this with greater certainty, I requested that the "raw" photographic files be obtained. Most contemporary photographers shoot in "raw" format. The "raw" format captures the entirety of the information that is received by the sensor in the camera. Files in such format thus have much more "information" than files that have been processed or converted to other formats, the most common being "jpeg." "Jpeg" formatted photographs actually "compress" the photographic data, and thereby lose of much of the data from the camera sensor (called "lossy compression"). The advantage of "jpeg" is that such images have much smaller digital file sizes and thus can be used on web sites, transmitted by email or text, and can be easily viewed on computers and phones. Another advantage of "raw" files is that they contain "EXIF data" from the camera. This data shows the camera used, the lens used, the ISO, the resolution, the time taken, and other data.

With regard to photographer Coady, I was only provided Jpeg image files. It is my understanding that Mr. Coady does not shoot in raw. Thus the images are not as sharp as the images from the other photographers.

In order to view the images with the most detail, I opened the image files in Adobe Photoshop, the premier photography software. I applied two filters to assist with drawing out detail: "Detail Enhancer" and "Output Sharpener" (both Photoshop plug-ins made by DXO as part of the "Nik Collection"). These filters do not add information that is not present in the initial photograph; they merely use algorithms to make that information more apparent. (In contrast, certain image manipulations, such as resolution enhancers,

add information through interpolation. I did not use any enhancements that “added information” to any of the images.

After applying the enhancement filters, I examined the image files I was provided and made the following observations:

	RAW IMAGE NUMBER	OBSERVATIONS	APPENDIX
Raw Files From Photographer Jamie Newell			
	DSC_0422.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0423.NEF	Although out of focus, the left front hoof has an obvious protrusion below the toe consistent with a toe grab.	Appendix A
	DSC__0424.NEF	Right front hoof too out of focus to discern presence or absence of toe grab.	
	DSC_0636.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0637.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab. Note that the protrusion appears metallic and has obvious left and right edges.	Appendix B
	DSC_0640.NEF	The image shows the right hoof from a rear view. Clearly shows metal protruding from the shoe consistent with a toe grab. Note that the protrusion appears to have a different color and texture than the metal of the shoe. I understand that this is typical for toe grabs.	Appendix C
	DSC_0641.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab. Note that the protrusion appears metallic and has obvious left and right edges.	Appendix D
	DSC_0642.NEF	Although slightly blurred, the image shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix E
	DSC_0644.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0645.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix F
	DSC_0646.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix G
	DSC_0666.NEF	Image is blurred but appears to show a protrusion on the left front toe. The image of the right front hoof is from the bottom of the hoof, but is out of focus. However, it shows the shoe from a parallel axis and seems to show what appears to be a protrusion.	Appendix H
	DSC_0667.NEF	Slightly out of focus but shows the left front hoof from behind. Does not reveal one way or another the presence of a protrusion because the protrusion would likely be directly toward the camera angle.	Appendix I
	DSC_0668.NEF	Another image from behind the hoof. The image is blurred but distinctly shows a protrusion on the left front toe.	Appendix J
	DSC_0669.NEF	Image is too blurred to reveal presence or absence of toe grabs.	
	DSC_0719.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix K
	DSC_0722.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	

	DSC_0723.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix L
	DSC_0724.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix M
	DSC_0726.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0727.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix N
	DSC_0728.NEF	Hoof angled in but shows metal protruding below the right front hoof toe consistent with a toe grab.	
	DSC_5701.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix O
	DSC_5702.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_5703.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_5704.NEF	Hooves are too out of focus to reveal presence or absence of toe grabs.	
	DSC_5705.NEF	Somewhat out of focus but shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix P
Raw From Photographer Jenny Doyle			
	DSC_0409.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab. Note that in this photographer's images the toe grab appears more Granular in texture compared to the other photographer's images. This is because this photographer uses cameras with a smaller and less sophisticated sensor than the other photographers.	Appendix Q
	DSC_0412.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix R
	DSC_0442.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix S
	DSC_0443.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix T
	DSC_0446.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix U
	DSC_0450.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix V
	DSC_0453.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix W
	DSC_0454.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix X
Raw From Photographer Matt Wooly			
	B35 18510.CR2	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix Y
Jpeg From Photographer Coady			
	HRC Coady 10-1 1.JPG	Blurred image but appears to show protrusion	
	HRC Coady 10-1 2.JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix Z

	HRC Coady 10-1 3JPG	Does not show hooves in position to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 4JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix AA
	HRC Coady 10-1 5JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 6.JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 7JPG	Pixelated image but appears to show protrusion	
	HRC Coady 10-1 8JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 9JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 10JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 11JPG	Does not show hooves in position to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 12JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 13JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix BB
	HRC Coady 10-1 14JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix CC
	HRC Coady 10-1 15JPG	Pixelated image but appears show protrusion	Appendix DD
	HRC Coady 10-1 16JPG	Image is not clear enough to reveal presence or absence of toe grabs.	

MEASUREMENT OF THE TOE GRABS

An effort was made to measure the vertical size of the toe grabs on the front hooves. To do this, I had to locate a portion of an image that would have an object in roughly the same plane as the hoof, situated approximately perpendicular to the camera, and which has actual dimensions that are approximately known. For this object I chose the goggles worn by the jockey of HOT ROD CHARLIE. The portion of the goggles nearly perpendicular to the camera were readily measurable using the “measure” tool in Photoshop. Of course, that measurement is somewhat arbitrary so it had to be compared to the known measurements of the goggles. An internet search of jockey goggles revealed somewhat similar goggles whose lenses measured 52 mm vertically (Appendix EE). Another pair, which appeared to be a larger model, measured 70 mm. The size of the lens measured vertically was thus assumed to be approximately 55 mm.

Six images were used to make the measurements. The goggles on each image were measured, then mathematically converted to actual millimeters using the assumed vertical goggle size of 55 mm. Then the toe grab was measured near the edge facing the camera, which would also be facing nearly perpendicular to the camera. The results are summarized in the following table. The appendixes show screen shots of the measurements with the arrows pointing to the measured length as they appear in Photoshop.

IMAGE	GOGGLE MEASUREMENT USING PHOTOSHP MEASURE TOOL	MULTIPLIER ASSUMING ACTUAL MEASUREMENT IS 55 mm	TOE GRAB MEASUREMENT USING PHOTOSHP MEASURE TOOL	TOE GRAB MEASUREMENT AFTER APPLYING MULTIPLIER	APPENDIX
DSC_0637 (left hoof)	55.74	0.99	3.69	3.7 mm	FF
DSC_0645 (left hoof)	83.17	0.66	5.06	3.3 mm	GG
DSC_0446 (left hoof)	46.43	1.18	3.35	3.9 mm	HH
DSC_0724 (right hoof)	54.08	1.02	4.71	4.8 mm	II
HRC Coady 10-1 14 (right hoof)	53.93	1.02	4.45	4.5 mm	JJ
83518510 (rt hoof)	40.02	1.37	3.29	4.6 mm	KK

Of course, several factors tend to make the measurements less than exact. The assumption that the measured part of the toe grabs was perpendicular to the camera was a conservative assumption; if the toe grab was angled away from perpendicular the measurement would be longer. The images of the toe grabs were not completely sharp, but a conservative approach was used in measuring to account for that. The goggles used as a standard might be larger or smaller, but such variance would not change the measurements to a great degree. Even given the uncertainties, and given the conservative approach taken, it can be reasonably concluded that the front limb toe grabs protruded at least 3 mm from the shoe. As noted, these are likely to be conservative estimates.

CONCLUSIONS

It is not possible to explain that what appears to be a toe grab is anything but a toe grab, as opposed to a reflection from the horseshoe metal or another anomaly. The appearance of the protrusion is consistent among every photograph from every photographer. Not a single photograph that could have shown a toe grab fails to show a toe grab. Moreover, the toe grabs appear similar in both hooves, which one would expect if toe grabs were used.

The conclusion from the review of these images is that all images that could show a toe grab on the left and right hooves of HOT ROD CHARLIE do in fact show a toe grab.

Furthermore, the measurements made by a conservative method reveal that the front limb toe grabs likely protruded at least 3mm from the shoe.

Sincerely,

/s/ Frank T Becker

Frank T. Becker







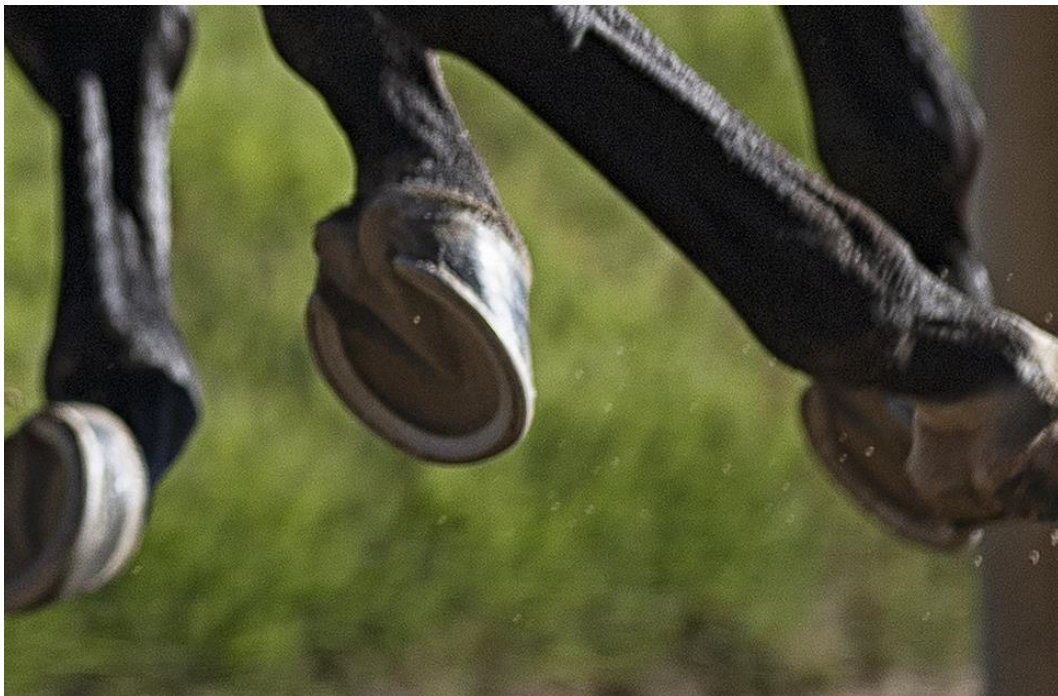












































APPENDIX Z HRC Coady 10-1 2JPG



APPENDIX AA HRC Coady 10-1 4JPG

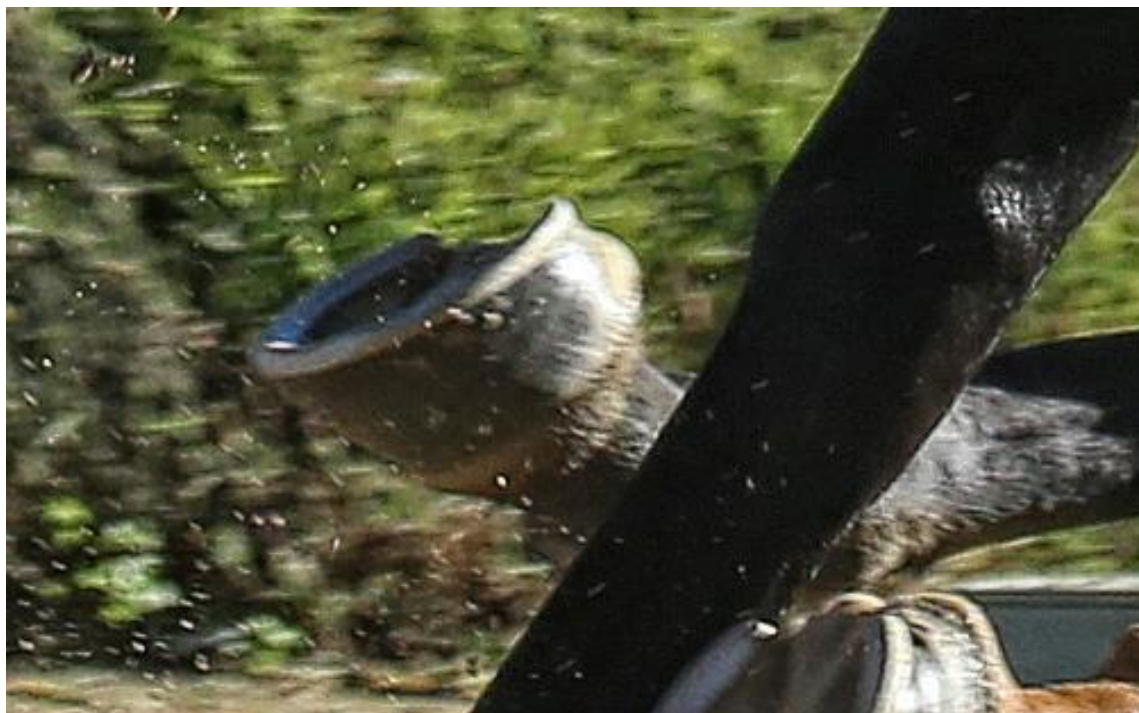


APPENDIX BB HRC Coady 10-1 13JPG

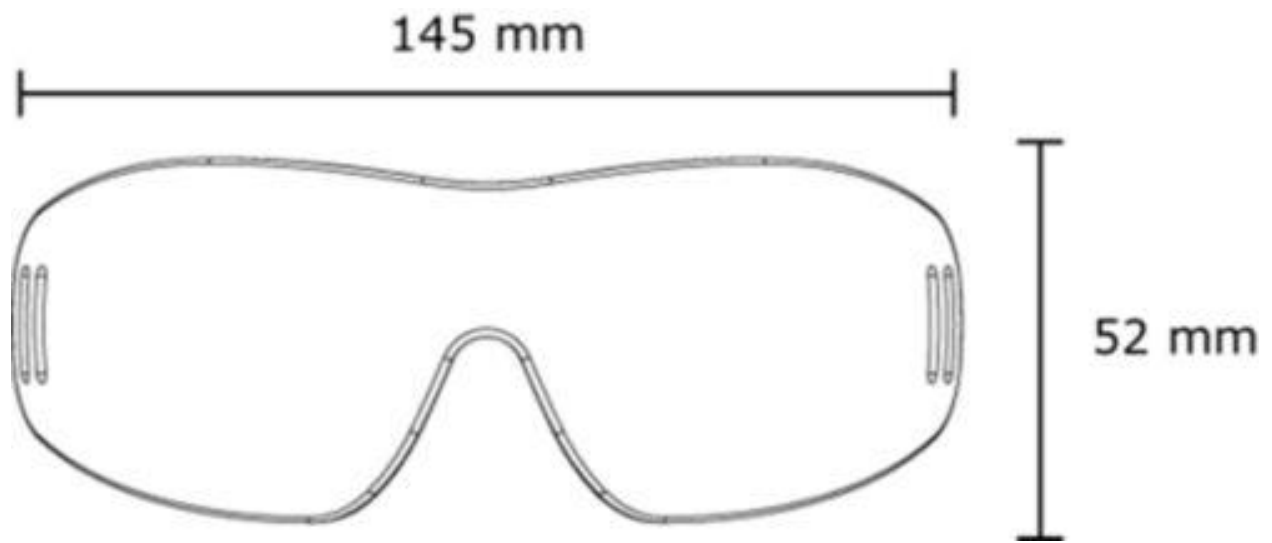


APPENDIX CC HRC Coady 10-1 14JPG

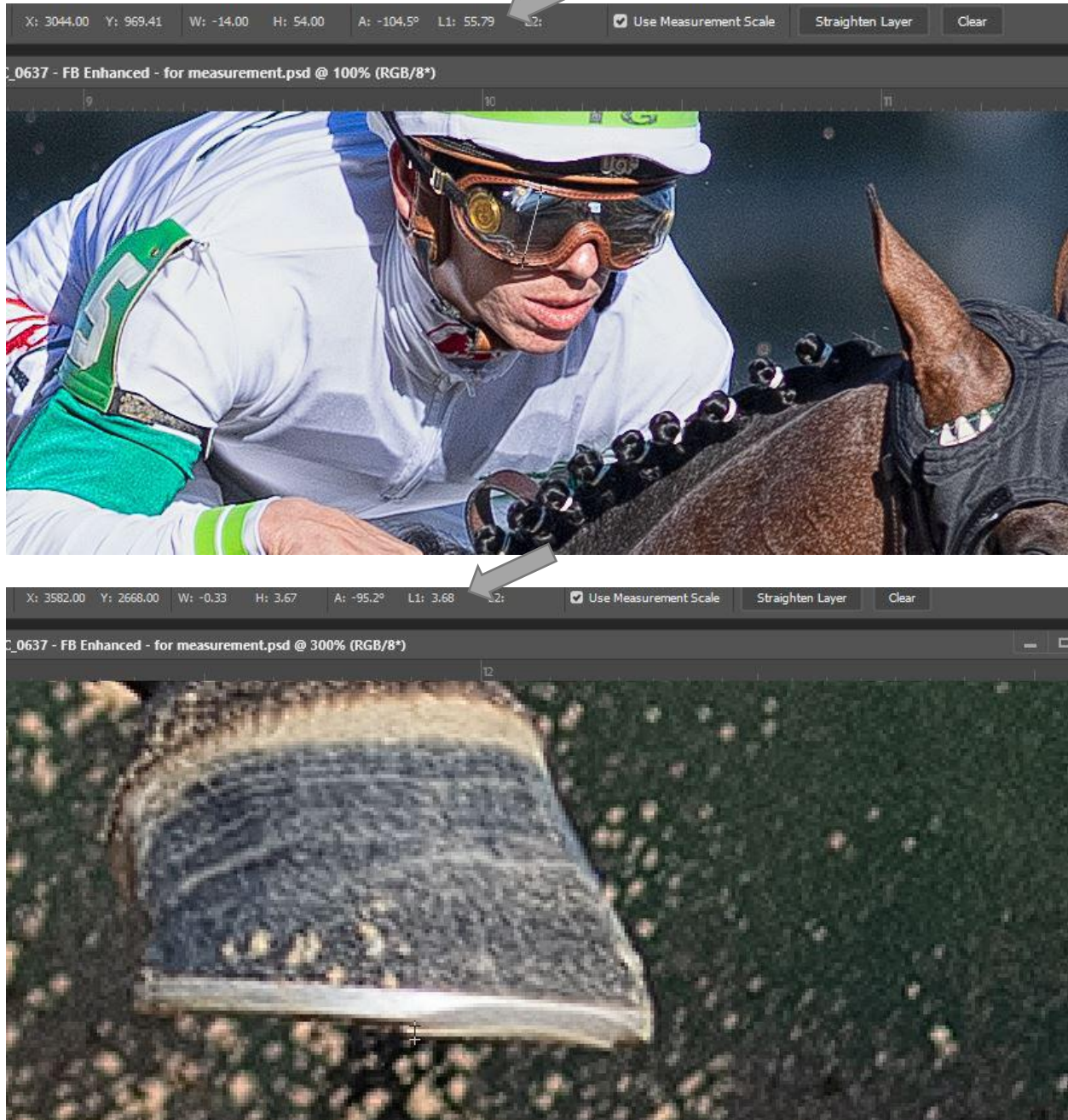




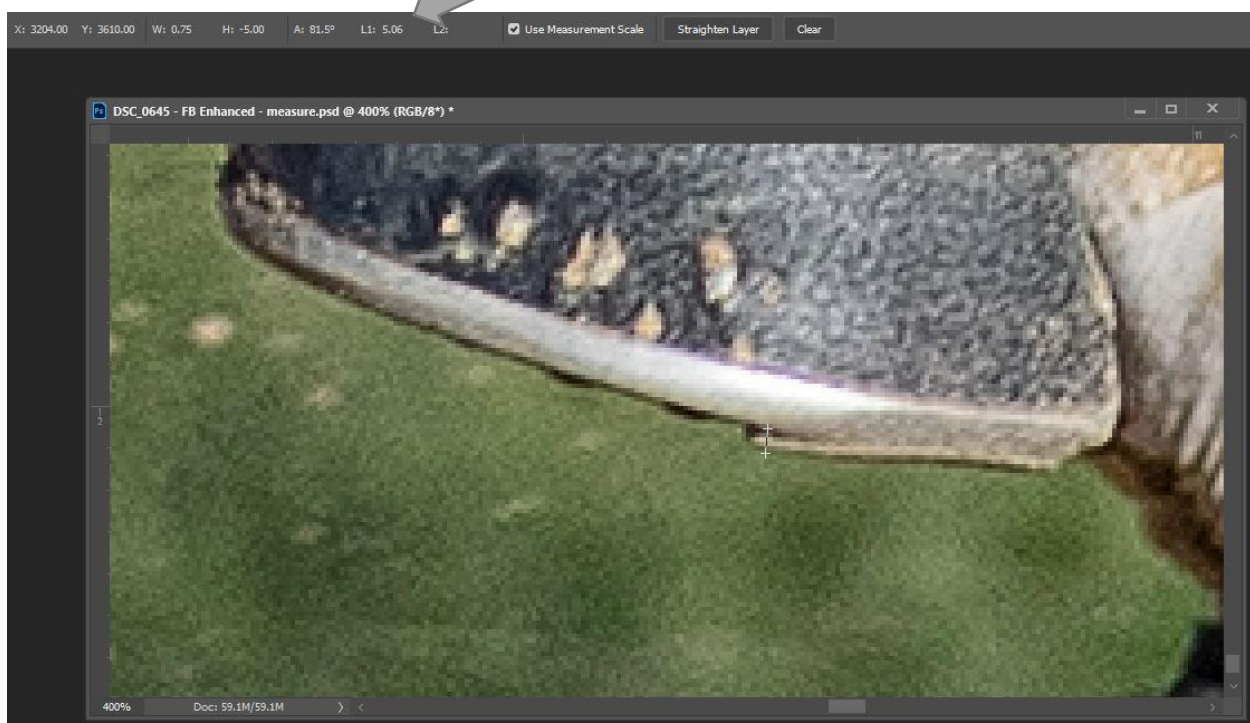
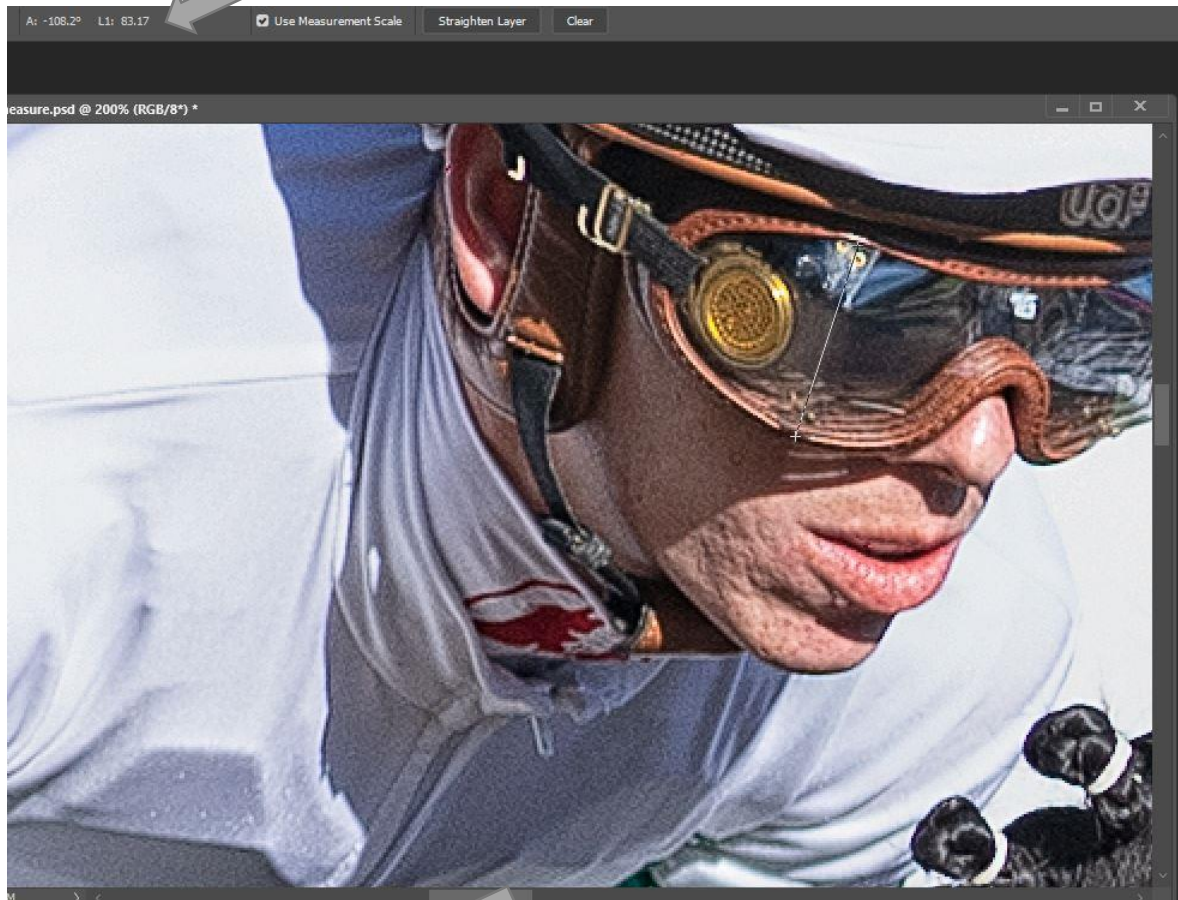
APPENDIX EE Image of Goggles with Dimensions



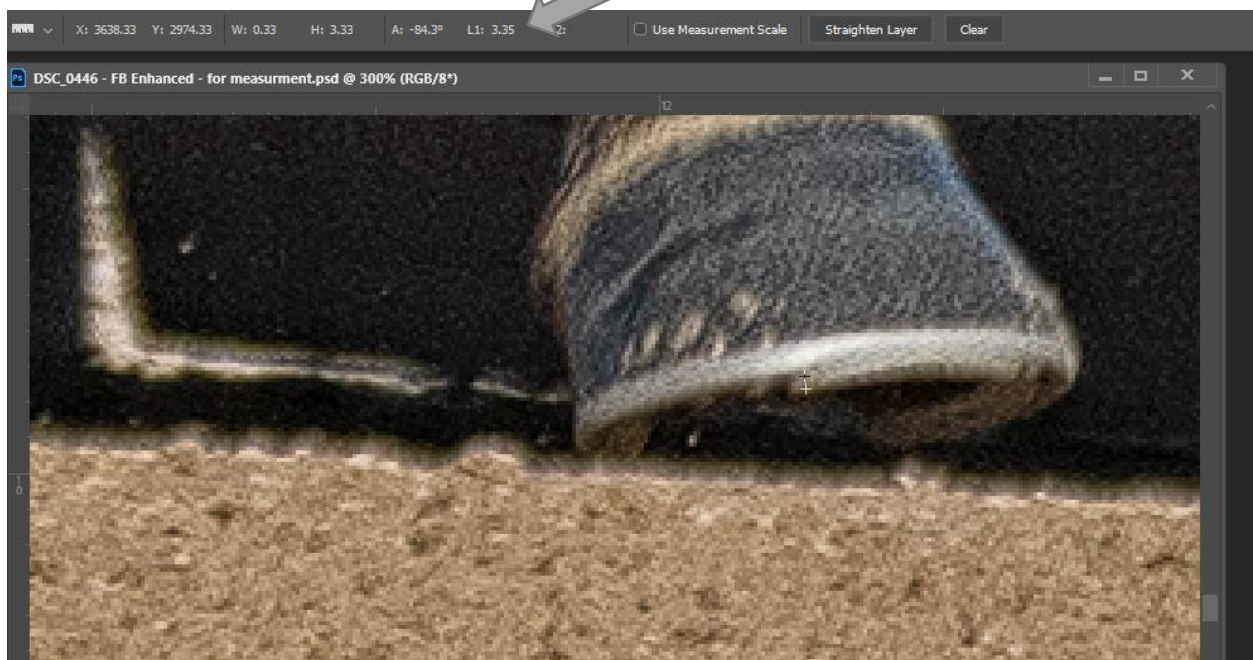
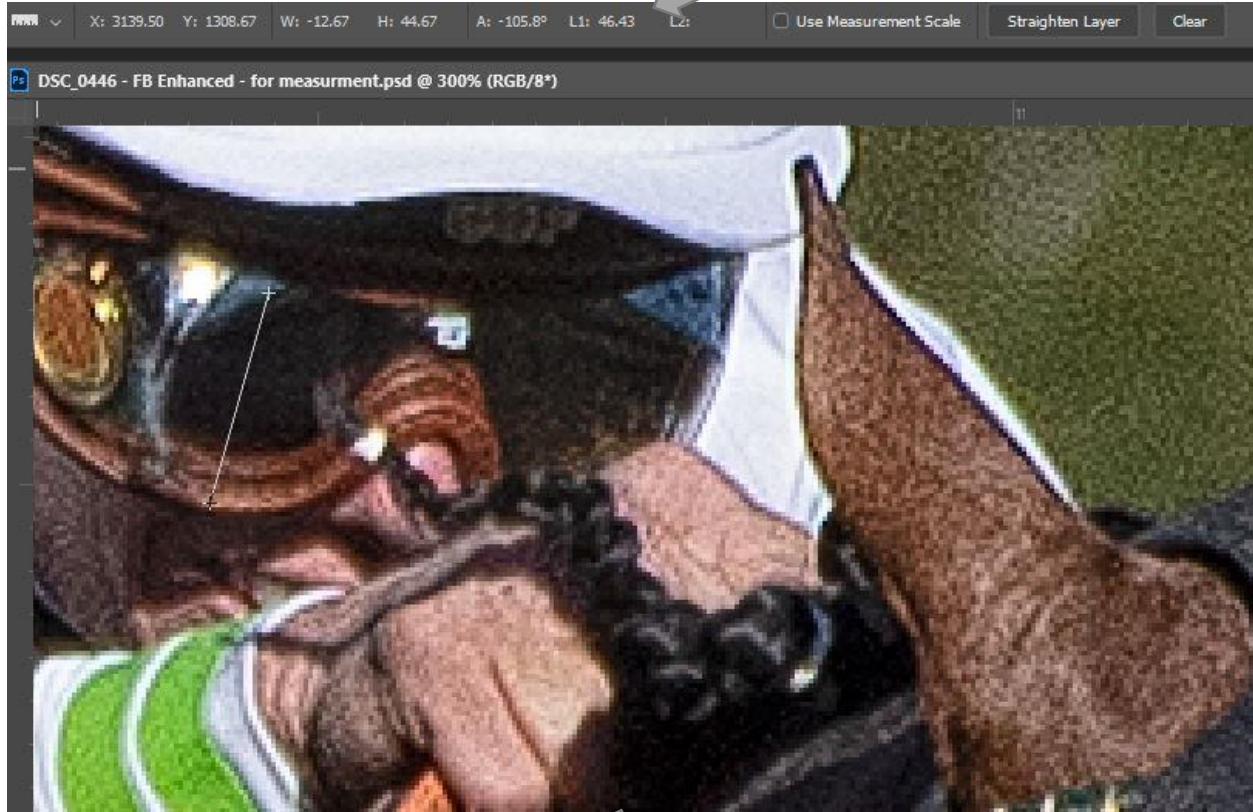
APPENDIX FF DSC_0637 Measurements



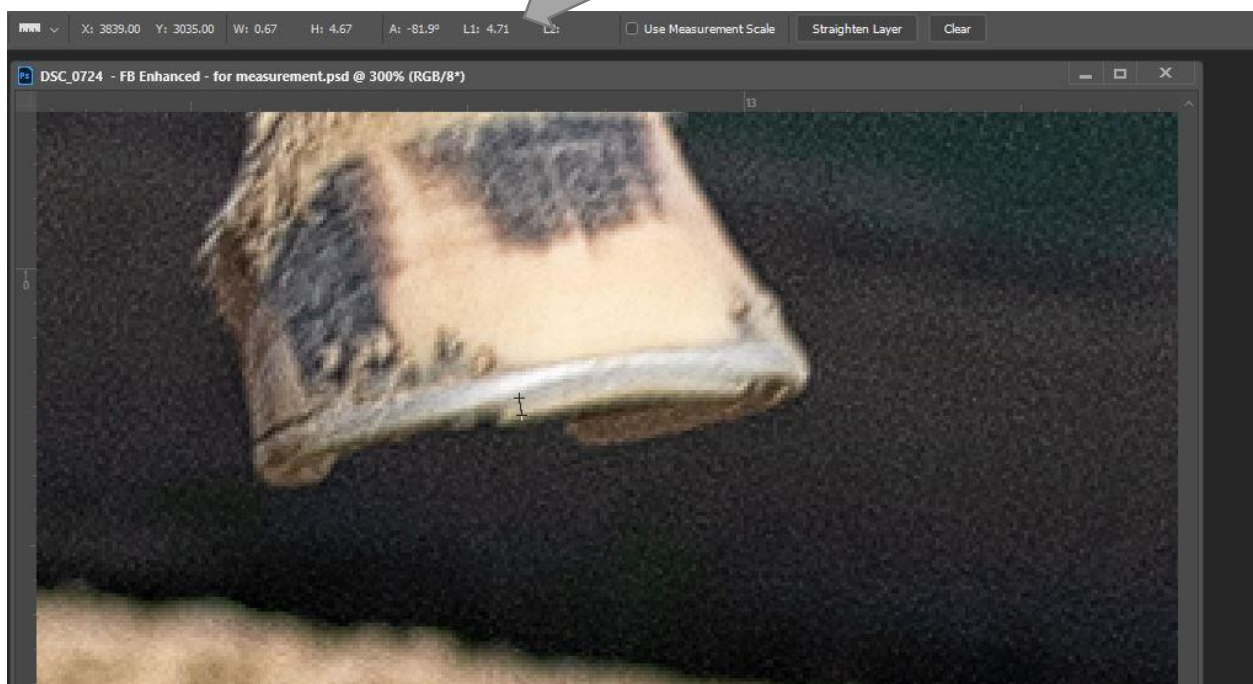
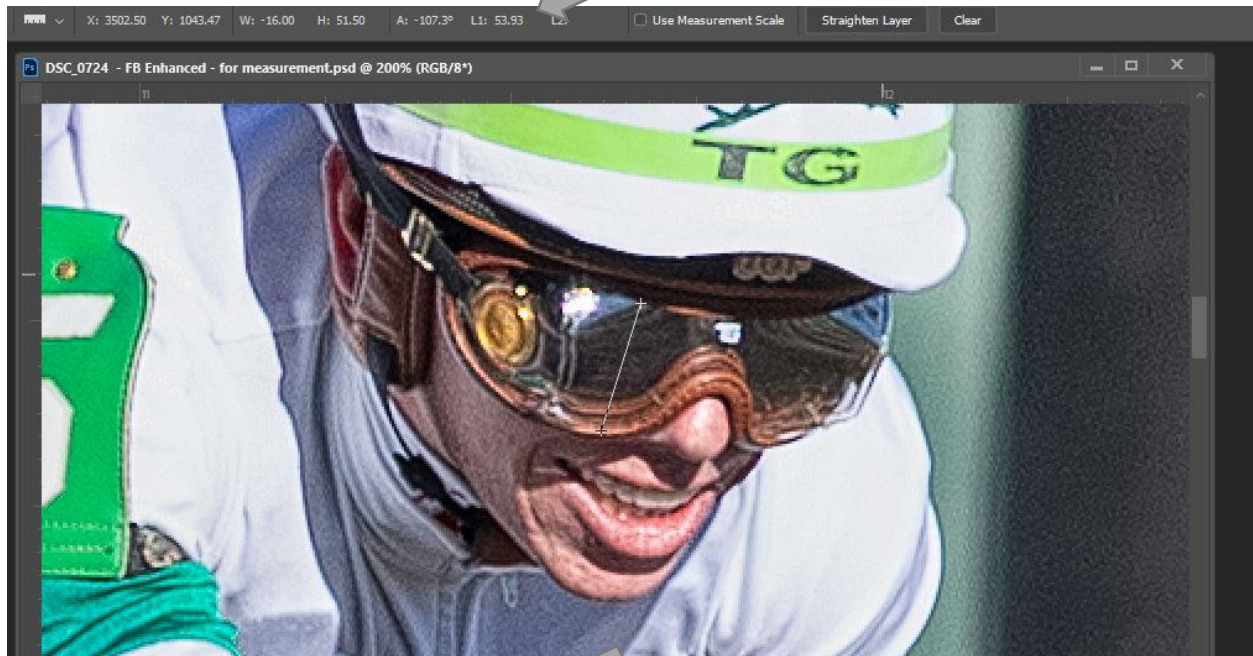
APPENDIX GG DSC_0645 Measurements



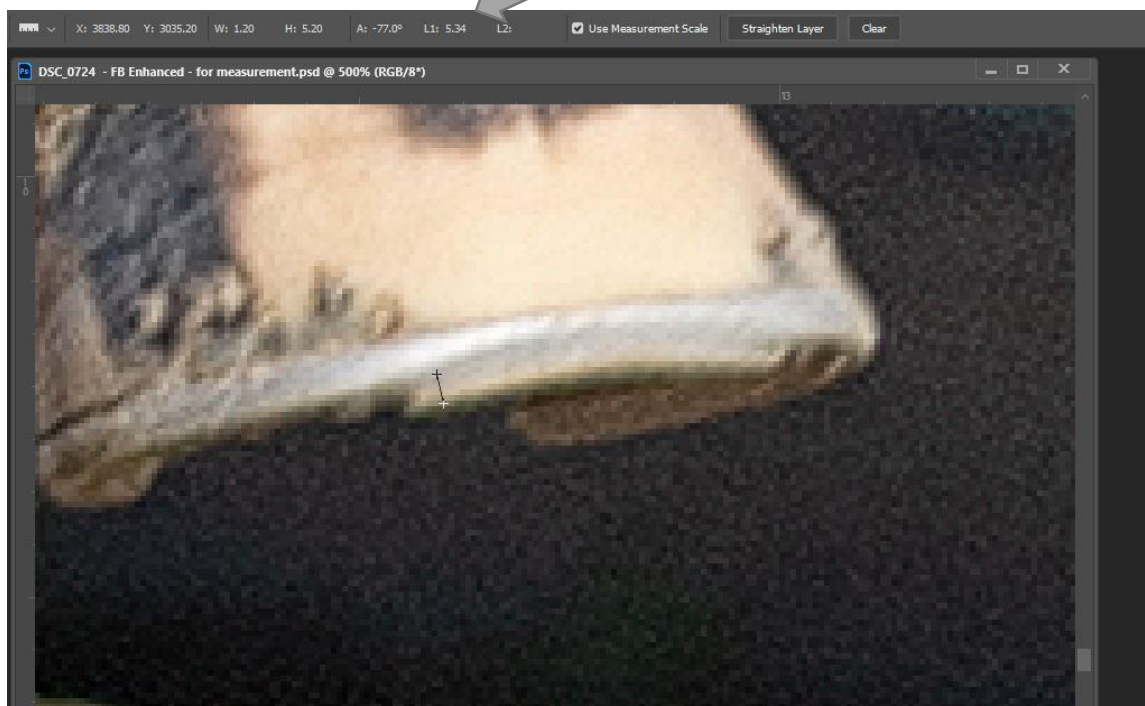
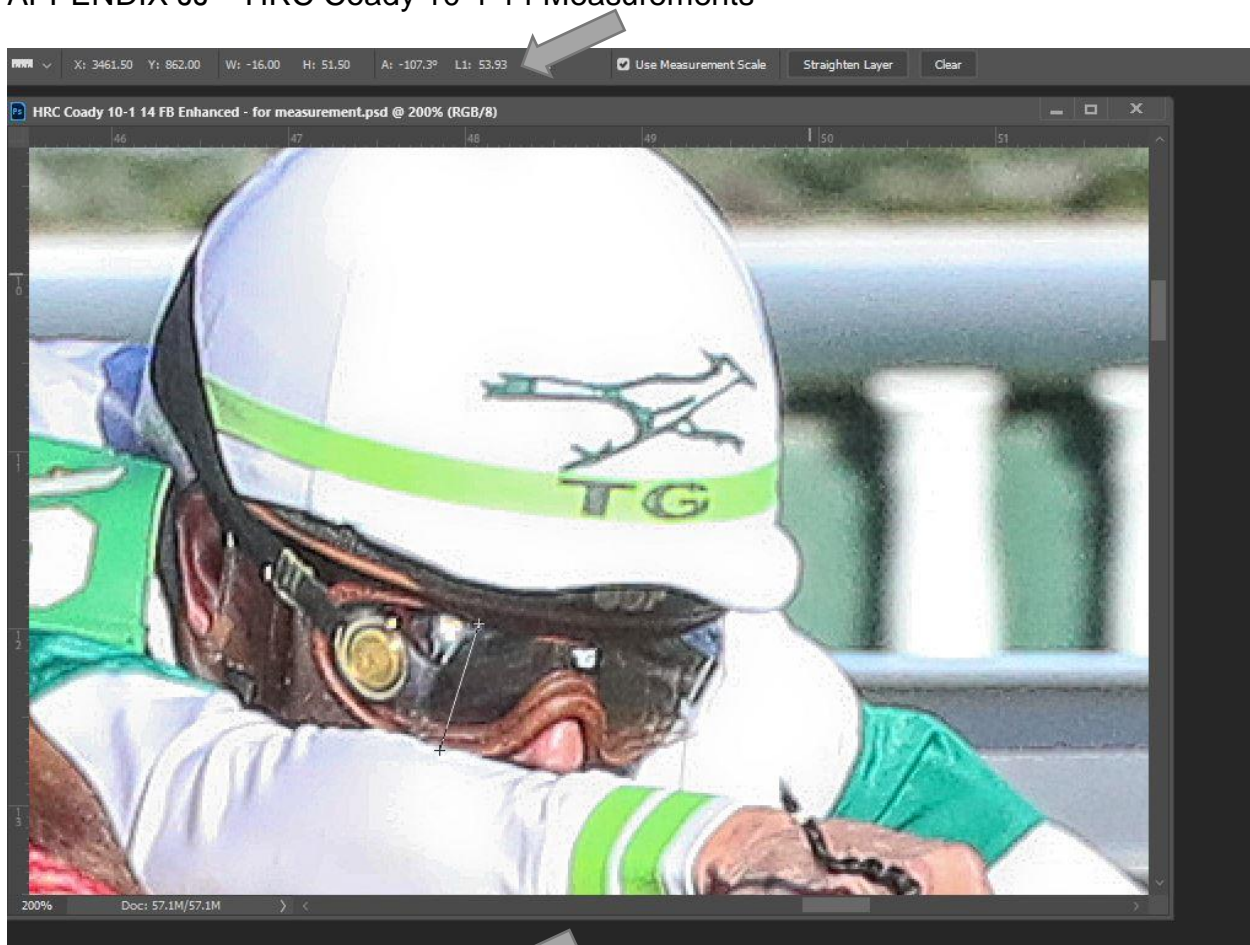
APPENDIX HH DSC_0446 Measurements



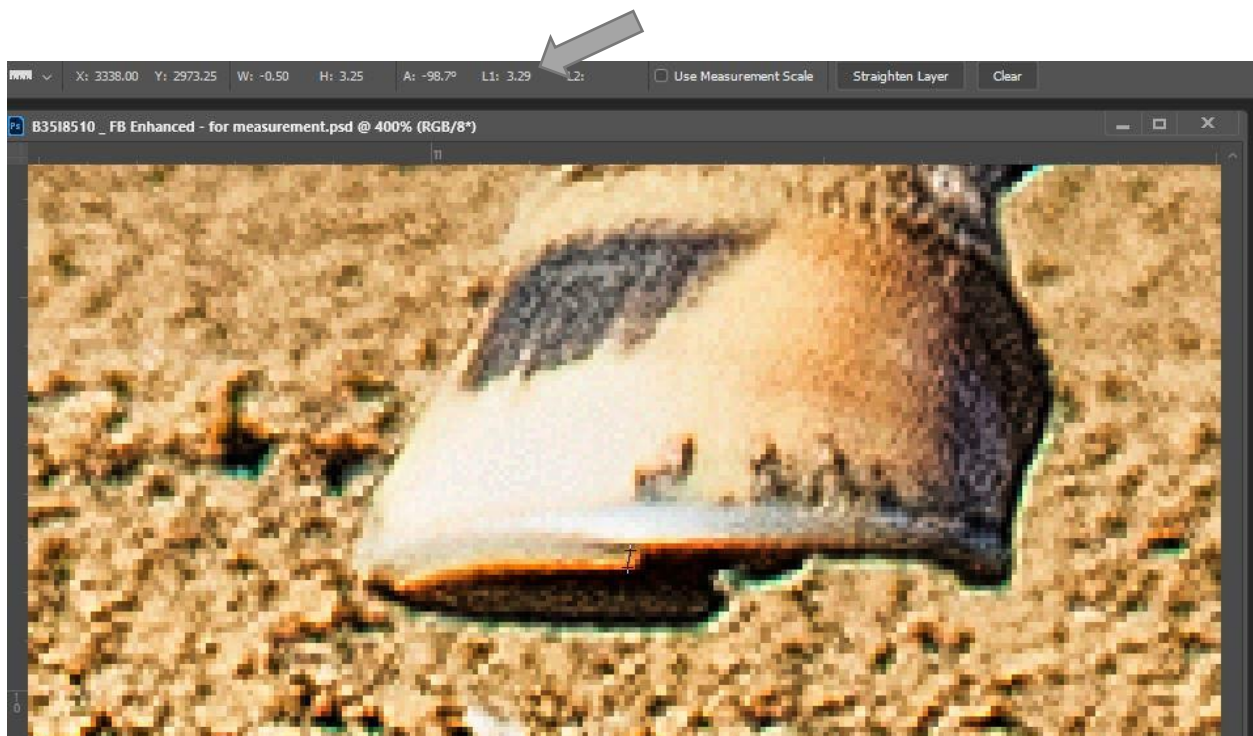
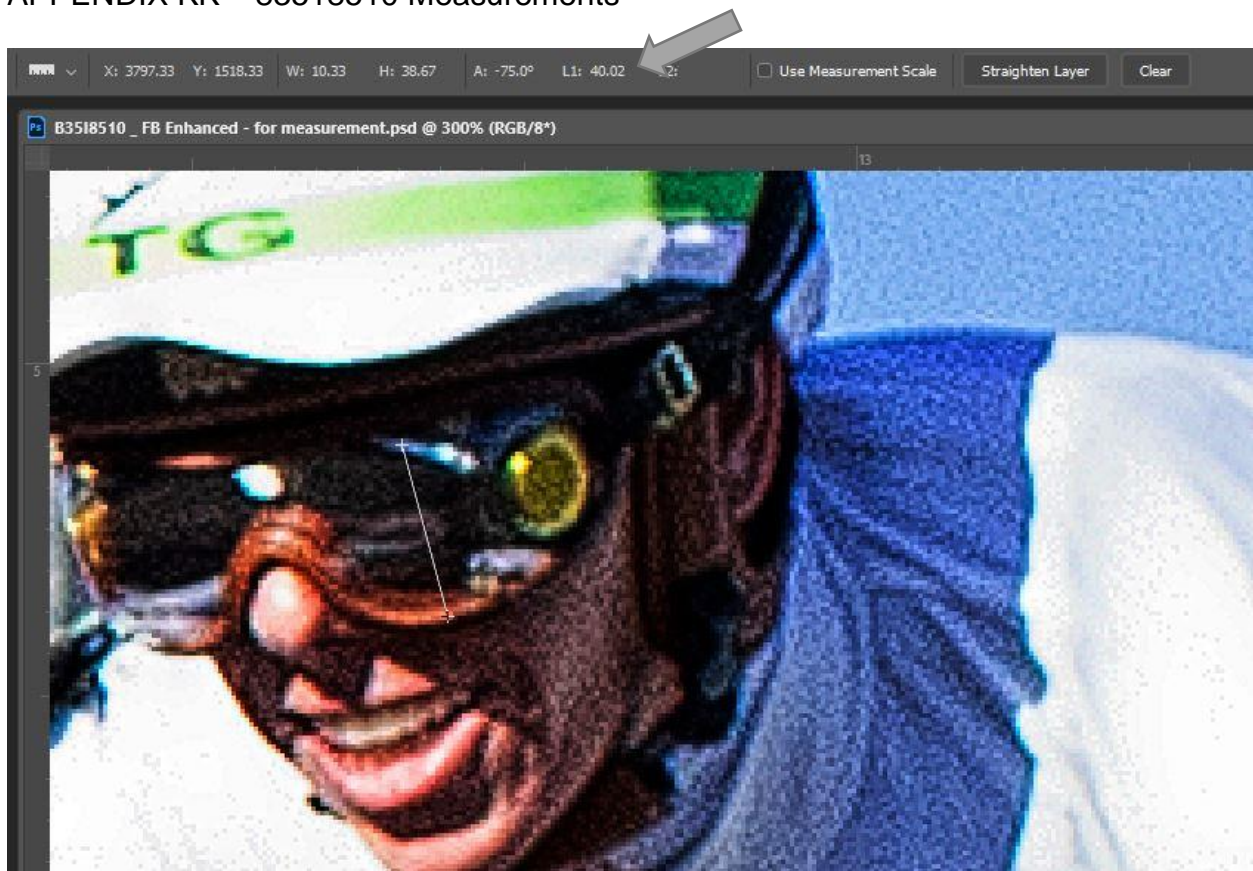
APPENDIX II DSC_0724 Measurements



APPENDIX JJ HRC Coady 10-1 14 Measurements



APPENDIX KK 83518510 Measurements



Attachment D

HORSERACING INTEGRITY AND SAFETY AUTHORITY

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SUPPLEMENTAL MOTION FOR RECONSIDERATION BY RED TR RACING: RE RULE 2276 CHALLENGE TO HOT ROD CHARLIE'S RUN IN THE LUKAS CLASSIC

Movant, RED TR Racing LLC, as owner of RICH STRIKE ("Movant"), respectfully submits this Supplemental Motion for Reconsideration to Bryan Beaman, Esq., HISA Enforcement Counsel. Movant is submitting this Supplemental Motion pursuant to the procedures established by HISA General Counsel, John Roach, Esq., and by Mr. Beaman, for addressing Movant's protest of HISA's failure to enforce its Rule 2276 with respect to the participation of HOT ROD CHARLIE in Race No. 10 at Churchill Downs on October 1, 2022 ("the Lukas Classic Race"). HISA Rule 2276 prohibits horses from wearing toe grabs *of any length* on front limb shoes for races on dirt or synthetic tracks:

(a) Except for full rims 2 mm or less from the ground surface of the horseshoe, traction devices are prohibited on forelimb and hindlimb horseshoes during racing and training on dirt or synthetic racing tracks.

"(b) Traction devices are prohibited on forelimb and hindlimb horseshoes during training and racing on the turf.

"(c) Traction devices include but are not limited to rims, toe grabs, bends, jar calks and stickers."¹

"Full rims" are part of the aluminum ground surface of the shoe, on the outside of the channel in the ground surface of the shoe. As the name suggests, "full rims" run along the entire ("full") ground surface of the shoe – they do not protrude at the toe of the shoe. Thus, the 2 mm allowance for "full rims" does not apply to toe grabs or other protrusions at the toe – any protrusion at the toe is prohibited by the plain terms of the Rule. This was made clear by Dr. Susan Stover, Chair of

¹ The Rule has been modified to permit toe grabs up to 4 mm on hindlimb horseshoes, but it has not been modified for forelimb horseshoes.

HISA's Racetrack Safety Commission, in announcing the scope and intent of the Rule to the American Farriers Journal for its May 12, 2022 Article regarding the Rule:

“Toe grabs are not allowed at all,” she says. “Any wear plate at the toe must not extend beyond the ground surface of the shoe. The inclusion of a 2 mm (outside) rim (around the entire circumference of the shoe) is intended to provide an option for additional traction if conditions warranted, without altering the conformation of the hoof relative to the ground surface. The 2 mm height is the maximum height that the rim can extend from the ground surface of the shoe.”²

HOT ROD CHARLIE plainly ran in violation of HISA Rule 2276 at the Lukas Classic Race, and the Horse should have been disqualified. The photographic evidence from the Race makes that conclusion abundantly clear. Moreover, an examination of the shoes removed from the Horse after the race, revealing toe grab protrusions of approximately 4 mm on each shoe, plainly confirms that conclusion.

Procedural Background

The Lukas Classic Race was run as race 10 at Churchill Downs on October 1, 2022. HOT ROD CHARLIE won the race; RICH STRIKE placed second by a nose.

On October 4, 2022, Eric Reed, RICH STRIKE's trainer, received photographs showing toe grabs on HOT ROD CHARLIE's front shoes. Mr. Reed promptly reported this information to Barbara Borden, Chief Steward of the Kentucky Horse Racing Commission ("KHRC"). On October 8, 2022, after a brief investigation, Ms. Borden, together with two other KHRC Stewards, determined that "there is sufficient evidence to confirm that HOT ROD CHARLIE raced in compliance with HISA Rule #2276 at Churchill Downs on 10-1-22." On October 18, 2022, HISA counsel John Forgy first advised Rich Strike's owner of this finding, along with HISA's conclusion that it agreed with this finding by the KHRC Stewards.

² May 12, 2022 American Farriers Journal, *HISA Clarifies Shoeing Rules, Confirms Delay* (Costa).

On October 26, 2022, Movant timely appealed the foregoing HISA finding pursuant to Rule 8350 [Exhibit A.] Thereafter, HISA's General Counsel, John Roach, informed the undersigned that HISA would handle this appeal as a motion for reconsideration of HISA's findings and that HISA's Enforcement Counsel, Bryan Beaman, would consider evidence to be submitted to Mr. Beaman by Movant on the question of whether HISA should reconsider its findings.

On December 2, 2022, prior to being given access to inspect the shoes that were allegedly removed from HOT ROD CHARLIE after the Lukas Classic Race, Movant submitted its preliminary showing in support of reconsideration. This showing detailed the photographic evidence that plainly revealed that HOT ROD CHARLIE was wearing toe grabs during that Race. Thereafter, on December 9, 2022, Movant was provided access to examine the shoes. This examination not only called into question testimony that the 2 mm Kerckhaert Tradition XT toe grabs on HOT ROD CHARLIE's Horseshoes were filed down flush to the aluminum ground surface when the Horse was shod a month before the race (as there are still 2 mm steel toe grabs on the shoes), but it revealed the existence of toe grab protrusions of approximately **4 mm**, half steel and half aluminum, at the toe of the shoe.

Photographic Evidence

As stated above, HISA Rule 2276 prohibits toe grabs that protrude by **any** length below the ground surface of the Horseshoe during racing on dirt or synthetic tracks.

As set forth in the attached December 16, 2022 Report of Frank Becker [Exhibit B],³ there can be no dispute but that HOT ROD CHARLIE was wearing shoes with toe grabs protruding

³ Mr. Becker's December 16 Report supplements the preliminary report he submitted along with Movant's December 2, 2022 Motion. The only material change to the contents of that Report was made to address the December 9, 2022 examination of the shoes allegedly removed from HOT ROD CHARLIE after the Lukas Classic Race.

below the ground surface of the Horseshoe during the Lukas Classic Race. *Thirty different photographs taken by four separate photographers at various points in the race clearly reveal this fact.* Mr. Becker's forensic examination of the photographic evidence further reveals that the toe grabs extended no less than 3 mm below the ground surface of HOT ROD CHARLIE's forelimb Horseshoes.

Review of the "Evidence Bag" Shoes

According to KHRC's investigation report, the relevant evidentiary timeline is as follows:

October 4, 2022: KHRC's Medical Director, Dr. Bruce Howard, inspects the shoes and advises HOT ROD CHARLIE's team of the nature of the investigation; however, no photographs are taken that day;

October 5, 2022: a KHRC investigative team visits HOT ROD CHARLIE and takes the first available post-race pictures of the Horse's shoes;

October 10, 2022: the shoes are removed from HOT ROD CHARLIE and taken into KHRC custody.

The condition of the shoes in the evidence bag (which shoes were bagged by HISA when they were delivered by KHRC), is detailed in Mr. Becker's December 16 Report at pages 6-8 and at Appendices LL-OO. As demonstrated in that Report, the shoes, in their post-race condition, appeared similar to those in the photographs. A toe grab protrusion of approximately 4 mm, half steel and half aluminum, appeared at the toe of the shoes. The fact that a 2 mm steel extension remains on the shoes calls into question HOT ROD CHARLIE's farrier's testimony that he ground down the Kerckhaert Tradition XT toe grabs (which are 2 mm in their manufactured state [Appendix PP]). Instead, it appears that, from August 30, 2022, when the farrier says he shod the Horse, until October 10, 2022, when the shoes were finally removed, HOT ROD CHARLIE illegally trained and raced with toe grabs, starting (on August 30) at 2 mm below the adjacent aluminum ground surface and then by race day, as the aluminum around the toe wore down or was

grinded down, growing to 4 mm below the adjacent aluminum ground surface. **Of course, whatever the explanation for how or why the toe grabs appeared on the shoes of HOT ROD CHARLIE on the day of the Lukas Classic Race, the Horse still ran in violation of HISA Rule 2276 and must be disqualified.**

HISA's Conclusion Is Contrary to the Evidence

Neither the KHRC Stewards nor HISA have to date provided any explanation for how or why they reached the conclusion that “there is sufficient evidence to confirm that HOT ROD CHARLIE raced in compliance with HISA Rule #2276 at Churchill Downs on 10-1-22,” when all of the evidence, both the photographic evidence from the Race as well as a physical inspection of the shoes as they were removed from the Horse, conclusively reflects to the contrary. If the Stewards wrongly believed that a protrusion of up to 2 mm was permissible at the toe (as may have been considered acceptable *prior* to HISA Rule 2276), then they overlooked that the new Rule, by its plain terms and as explained by HISA's Chair of Racetrack Safety, *see p. 2 supra*, does not permit for *any* protrusion. Plainly here, where there is both a 2 mm steel protrusion at the toe and an additional 2 mm aluminum protrusion at the toe, there can be no question but that the shoes were illegal. Moreover even accepting *arguendo* HOT ROD CHARLIE's farrier's testimony that the 2 mm Kerckhaert Tradition XT steel toe grabs were filed down to flush before he shod the Horse (which is called into question by the 2 mm steel protrusion still apparent at the toe) and even accepting *arguendo* that the presence of 4 mm toe grabs on HOT ROD CHARLIE's shoes on race day was only the result of natural wear and tear (which again is doubtful), the negative effect on the Horse's tendons and the unfair advantage of additional traction afforded to HOT ROD CHARLIE remained whatever the cause for the appearance of the toe grabs. And to comply with

the Rule (no toe grabs of *any length*) HOT ROD CHARLIE needed to be re-shoed with HISA Rule 2276 compliant shoes before the Race.

In conclusion, Movant submits that the evidence submitted with this Motion is conclusive on the issue of whether a violation of HISA Rule 2276 should have been found by HISA. Nonetheless, if HISA believes that the evidence is not conclusive on this matter, Movant requests that it be permitted to submit additional evidence, as well as testimony at a hearing at which Movant can confront the testimony presented by HOT ROD CHARLIE's interests.

Respectfully submitted,

/s/ Barry D. Hunter
Frost Brown Todd LLC
250 West Main Street, Suite 2800
Lexington, Kentucky 40507
Tel.: (859) 231-0000
Fax: (859) 231-0011
bhunter@fbtlaw.com
*Counsel for RED TR Racing LLC,
Richard Dawson, Member/Manger (owner Rich
Strike)*

EXHIBIT A

Horseracing Integrity and Safety Authority

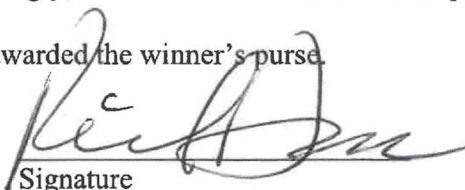
www.hisaus.org

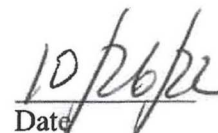
Notice of Appeal to the Board Under HISA Rule #8350

Name: RED TR Racing LLC, Richard Dawson, Member/Manager (owner Rich Strike)
Address: c/o attorney Barry D. Hunter
Frost Brown Todd, LLC
2800 Lexington Financial Center
Lexington, KY 40507
Telephone #: 859-244-3214
Email: bhunter@fbtlaw.com
Track: Churchill Downs
Date of Infraction: October 1, 2022

I hereby appeal the Order/Ruling of the KHRC Stewards, Borden, Becraft and Herbstreit issued on October 8, 2022* regarding the front shoes worn by Hot Rod Charlie in Race 10 at Churchill Downs on October 1, 2022 for the following reasons: The photographs taken by Coady Photography (Churchill Downs track photographer) and numerous others (attached) reveal that Hot Rod Charlie was wearing shoes with toe grabs in violation of HISA Rule #2276. Moreover, the farrier that shod Hot Rod Charlie before the race has admitted that he put shoes with toe grabs on the horse's front hooves. Accordingly, Hot Rod Charlie should be disqualified and Rich Strike should be declared the winner and awarded the winner's purse.

Richard Dawson
c/o Barry Hunter
Frost Brown Todd, LLC
2800 Lexington Financial Center
Lexington, KY 40507


Signature


Date

*Notice to Appellant
On October 18, 2022



Red



Photo: Kentucky Horse Racing Commission / Eclipse Sportswire

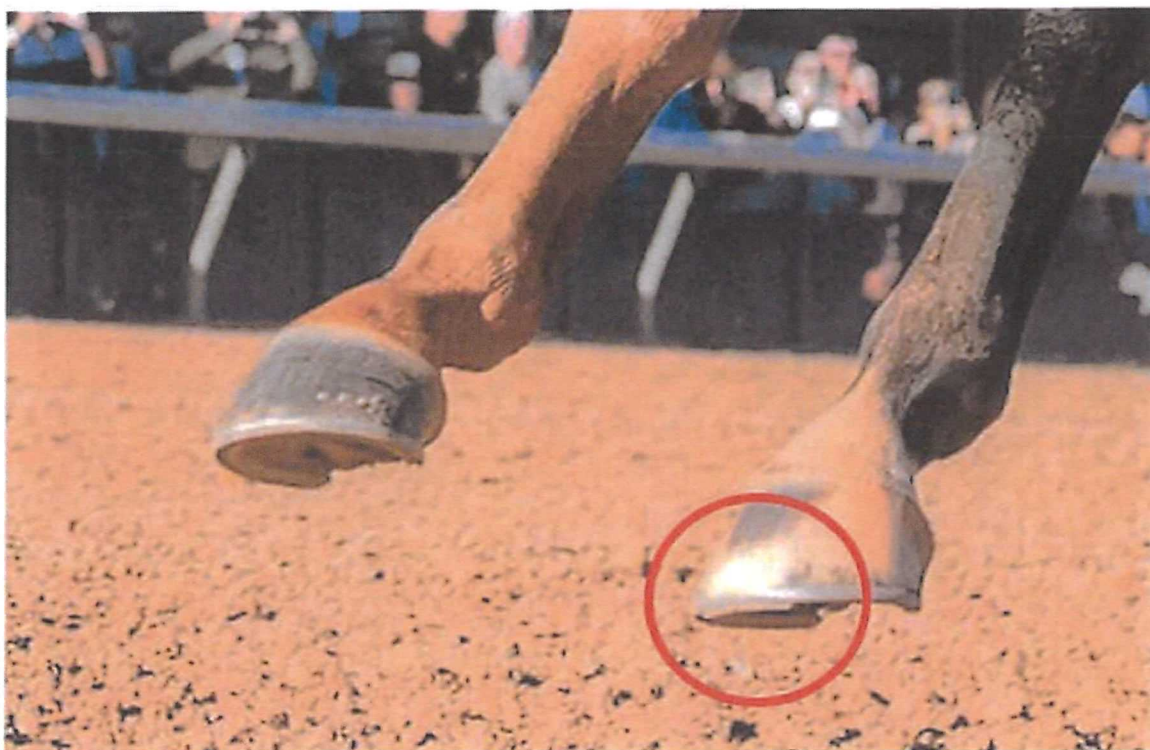
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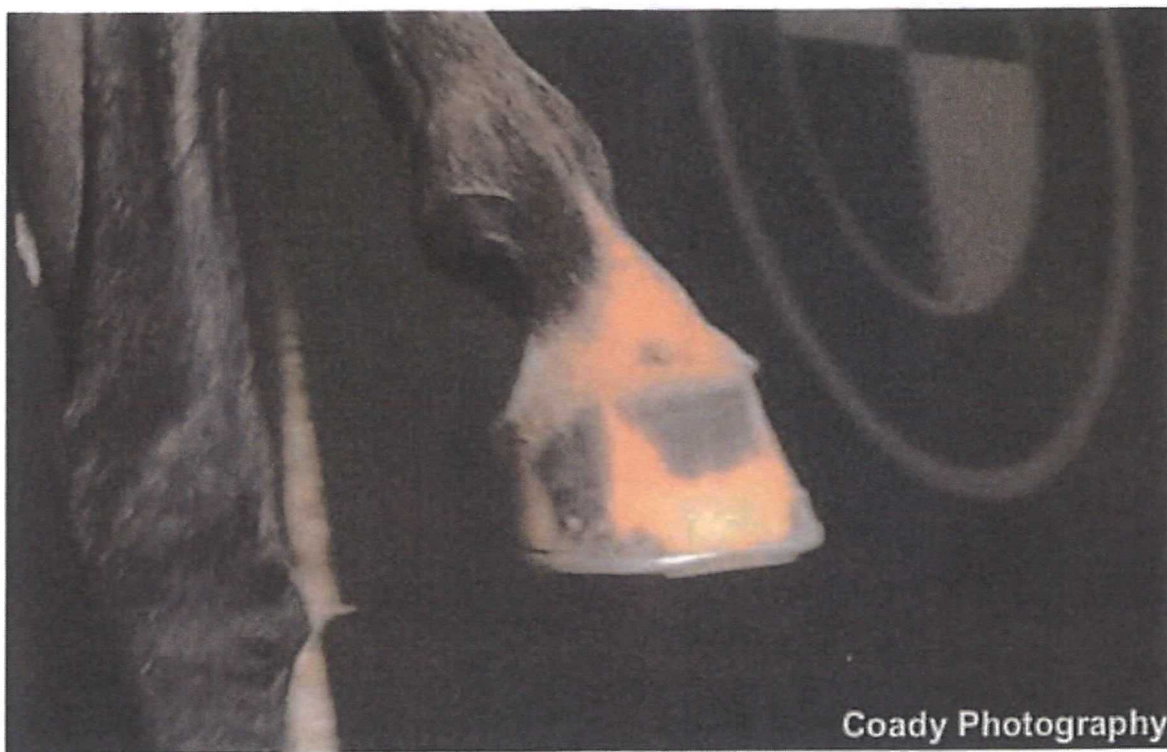
Red



Rad



Red



Neel

EXHIBIT B

218 Sycamore Drive
Lexington, Kentucky 40502
859-420-9561
859-266-2190 fax
frank@beckerattorney.com

FRANK T BECKER
Attorney

REPORT

December 16, 2022

INTRODUCTION / ENGAGEMENT

I was engaged by attorney Barry Hunter of Frost Brown Todd to review photographs of the thoroughbred horse HOT ROD CHARLIE in the Grade 2 Stakes Race called the Lukas Classic, run at Churchill Downs on October 1, 2022. I understand that HOT ROD CHARLIE finished first in that race. RICH STRIKE finished second. I understand that Mr. Hunter represents the owner of RICH STRIKE, who believes that HOT ROD CHARLIE may have had “toe grabs” on the shoes on his front hooves. Racing with toe grabs and similar devices on front hooves are prohibited under HISA and various state racing regulations.

I reviewed more than 50 separate photographs taken by four photographers over the course of the Lukas Classic race – capturing HOT ROD CHARLIE’S image at a number of discrete points of the race. Most of these photographs captured an image of the horse’s front hooves. As set forth below, I enhanced these images to make them clearer, and I am able to conclude that **every one of these enhanced photographs that could have shown the presence or absence of a toe grab do in fact reveal the presence of toe grabs on HOT ROD CHARLIE’S front hooves. That is, separate photographs taken by four different photographers confirm the presence of a toe grab on the shoes on HOT ROD CHARLIE’s front hooves at the Lukas Classic race at Churchill Downs on October 1, 2022. Furthermore, the examination and photographs of the horseshoes purportedly worn by HOT ROD CHARLIE in the race confirm the presence of such toe grabs.**

PERSONAL BACKGROUND AND CREDENTIALS

I have had a career in both law and photography. My legal career began in 1979, after graduating first in my class from the University of Kentucky College of Law. Although my practice was initially varied, after a few years my practice largely involved equine matter, both transactions and litigation, including representing clients in racing matters. I served as an Adjunct Professor of Law at the University of Kentucky College of Law, where I taught Equine Law. I am the author of *Equine Law* (an academic treatise on the subject)t,

The Equine Case Law Digest, and several published articles, including those on Equine Law. I spoke annually at the University of Kentucky's National Conference on Equine Law, where I was also on the Planning Committee. I am currently largely retired from that practice, although I am actively engaged as an Arbitrator on the Commercial Arbitration Panel of the American Arbitration Association.

My photography career commenced in approximately 2001, and coincided with my legal career for approximately ten years, under the name "The Time Photography." I concentrated on portrait and wedding photography, as well as commercial photography largely involving travel. For example, I was engaged by an adventure travel company to photograph an adventure travel cruise in Greenland and Iceland, to obtain photographs for use in brochures and other promotional material. I have won several photography awards and had numerous photographs published. I have extensive experience with digital photography and the processing of photographic images.

METHODOLOGY AND TECHNIQUE EMPLOYED

As noted, I was tasked to review photographs of HOT ROD CHARLIE to determine if the photographs showed the presence of toe grabs on the front hooves. Initially I was provided a few photographs from various photographers who photographed the race, that had been provided to HISA in the initial review. These photographs were in "jpeg" format and of medium resolution. Even then, they appeared to reveal the presence of toe grabs.

However, to be able to determine this with greater certainty, I requested that the "raw" photographic files be obtained. Most contemporary photographers shoot in "raw" format. The "raw" format captures the entirety of the information that is received by the sensor in the camera. Files in such format thus have much more "information" than files that have been processed or converted to other formats, the most common being "jpeg." "Jpeg" formatted photographs actually "compress" the photographic data, and thereby lose of much of the data from the camera sensor (called "lossy compression"). The advantage of "jpeg" is that such images have much smaller digital file sizes and thus can be used on web sites, transmitted by email or text, and can be easily viewed on computers and phones. Another advantage of "raw" files is that they contain "EXIF data" from the camera. This data shows the camera used, the lens used, the ISO, the resolution, the time taken, and other data.

With regard to photographer Coady, I was only provided Jpeg image files. It is my understanding that Mr. Coady does not shoot in raw. Thus the images are not as sharp as the images from the other photographers.

In order to view the images with the most detail, I opened the image files in Adobe Photoshop, the premier photography software. I applied two filters to assist with drawing out detail: "Detail Enhancer" and "Output Sharpener" (both Photoshop plug-ins made by DXO as part of the "Nik Collection"). These filters do not add information that is not present in the initial photograph; they merely use algorithms to make that information more apparent. (In contrast, certain image manipulations, such as resolution enhancers,

add information through interpolation. I did not use any enhancements that “added information” to any of the images.

After applying the enhancement filters, I examined the image files I was provided and made the following observations:

	RAW IMAGE NUMBER	OBSERVATIONS	APPENDIX
Raw Files From Photographer Jamie Newell			
	DSC_0422.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0423.NEF	Although out of focus, the left front hoof has an obvious protrusion below the toe consistent with a toe grab.	Appendix A
	DSC__0424.NEF	Right front hoof too out of focus to discern presence or absence of toe grab.	
	DSC_0636.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0637.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab. Note that the protrusion appears metallic and has obvious left and right edges.	Appendix B
	DSC_0640.NEF	The image shows the right hoof from a rear view. Clearly shows metal protruding from the shoe consistent with a toe grab. Note that the protrusion appears to have a different color and texture than the metal of the shoe. I understand that this is typical for toe grabs.	Appendix C
	DSC_0641.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab. Note that the protrusion appears metallic and has obvious left and right edges.	Appendix D
	DSC_0642.NEF	Although slightly blurred, the image shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix E
	DSC_0644.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0645.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix F
	DSC_0646.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix G
	DSC_0666.NEF	Image is blurred but appears to show a protrusion on the left front toe. The image of the right front hoof is from the bottom of the hoof, but is out of focus. However, it shows the shoe from a parallel axis and seems to show what appears to be a protrusion.	Appendix H
	DSC_0667.NEF	Slightly out of focus but shows the left front hoof from behind. Does not reveal one way or another the presence of a protrusion because the protrusion would likely be directly toward the camera angle.	Appendix I
	DSC_0668.NEF	Another image from behind the hoof. The image is blurred but distinctly shows a protrusion on the left front toe.	Appendix J
	DSC_0669.NEF	Image is too blurred to reveal presence or absence of toe grabs.	
	DSC_0719.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix K
	DSC_0722.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	

	DSC_0723.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix L
	DSC_0724.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix M
	DSC_0726.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_0727.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix N
	DSC_0728.NEF	Hoof angled in but shows metal protruding below the right front hoof toe consistent with a toe grab.	
	DSC_5701.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix O
	DSC_5702.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_5703.NEF	Does not show hooves in position to reveal presence or absence of toe grabs.	
	DSC_5704.NEF	Hooves are too out of focus to reveal presence or absence of toe grabs.	
	DSC_5705.NEF	Somewhat out of focus but shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix P
Raw From Photographer Jenny Doyle			
	DSC_0409.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab. Note that in this photographer's images the toe grab appears more Granular in texture compared to the other photographer's images. This is because this photographer uses cameras with a smaller and less sophisticated sensor than the other photographers.	Appendix Q
	DSC_0412.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix R
	DSC_0442.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix S
	DSC_0443.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix T
	DSC_0446.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix U
	DSC_0450.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix V
	DSC_0453.NEF	Clearly shows metal protruding below the left front hoof toe consistent with a toe grab.	Appendix W
	DSC_0454.NEF	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix X
Raw From Photographer Matt Wooly			
	B35 18510.CR2	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix Y
Jpeg From Photographer Coady			
	HRC Coady 10-1 1.JPG	Blurred image but appears to show protrusion	
	HRC Coady 10-1 2.JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix Z

	HRC Coady 10-1 3JPG	Does not show hooves in position to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 4JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix AA
	HRC Coady 10-1 5JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 6.JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 7JPG	Pixelated image but appears to show protrusion	
	HRC Coady 10-1 8JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 9JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 10JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 11JPG	Does not show hooves in position to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 12JPG	Image is not clear enough to reveal presence or absence of toe grabs.	
	HRC Coady 10-1 13JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix BB
	HRC Coady 10-1 14JPG	Clearly shows metal protruding below the right front hoof toe consistent with a toe grab.	Appendix CC
	HRC Coady 10-1 15JPG	Pixelated image but appears show protrusion	Appendix DD
	HRC Coady 10-1 16JPG	Image is not clear enough to reveal presence or absence of toe grabs.	

MEASUREMENT OF THE TOE GRABS

An effort was made to measure the vertical size of the toe grabs on the front hooves. To do this, I had to locate a portion of an image that would have an object in roughly the same plane as the hoof, situated approximately perpendicular to the camera, and which has actual dimensions that are approximately known. For this object I chose the goggles worn by the jockey of HOT ROD CHARLIE. The portion of the goggles nearly perpendicular to the camera were readily measurable using the “measure” tool in Photoshop. Of course, that measurement is somewhat arbitrary so it had to be compared to the known measurements of the goggles. An internet search of jockey goggles revealed somewhat similar goggles whose lenses measured 52 mm vertically (Appendix EE). Another pair, which appeared to be a larger model, measured 70 mm. The size of the lens measured vertically was thus assumed to be approximately 55 mm.

Six images were used to make the measurements. The goggles on each image were measured, then mathematically converted to actual millimeters using the assumed vertical goggle size of 55 mm. Then the toe grab was measured near the edge facing the camera, which would also be facing nearly perpendicular to the camera. The results are summarized in the following table. The appendixes show screen shots of the measurements with the arrows pointing to the measured length as they appear in Photoshop.

IMAGE	GOGGLE MEASUREMENT USING PHOTOSHP MEASURE TOOL	MULTIPLIER ASSUMING ACTUAL MEASUREMENT IS 55 mm	TOE GRAB MEASUREMENT USING PHOTOSHP MEASURE TOOL	TOE GRAB MEASUREMENT AFTER APPLYING MULTIPLIER	APPENDIX
DSC_0637 (left hoof)	55.74	0.99	3.69	3.7 mm	FF
DSC_0645 (left hoof)	83.17	0.66	5.06	3.3 mm	GG
DSC_0446 (left hoof)	46.43	1.18	3.35	3.9 mm	HH
DSC_0724 (right hoof)	54.08	1.02	4.71	4.8 mm	II
HRC Coady 10-1 14 (right hoof)	53.93	1.02	4.45	4.5 mm	JJ
83518510 (rt hoof)	40.02	1.37	3.29	4.6 mm	KK

Of course, several factors tend to make the measurements less than exact. The assumption that the measured part of the toe grabs was perpendicular to the camera was a conservative assumption; if the toe grab was angled away from perpendicular the measurement would be longer. The images of the toe grabs were not completely sharp, but a conservative approach was used in measuring to account for that. The goggles used as a standard might be larger or smaller, but such variance would not change the measurements to a great degree. Even given the uncertainties, and given the conservative approach taken, it can be reasonably concluded that the front limb toe grabs protruded at least 3 mm from the shoe. As noted, these are likely to be conservative estimates.

EXAMINATION OF HORSESHOES IN EVIDENCE

On December 9, 2022, HISA's counsel permitted representatives of RICH STRIKE, including me, to examine and photograph the horseshoes provided by the trainer of HOT ROD CHARLIE purporting to be the shoes worn by the horse in the race.

A sample of photographs taken of the left front horseshoe is compiled in Appendix LL. A sample of photographs taken of the right front horseshoe is compiled in Appendix MM.

The examination undeniably revealed a protrusion on the front toe of each horseshoe extending beyond the bottom plane of the horseshoe. The protrusion consisted partially of a steel insert (evident by its darker appearance and duller texture), and aluminum from the shoe. The aluminum portion of the protrusion appears to have been created by either the grinding down or the wearing down of the horseshoe's aluminum on either side of the toe of the shoe where the steel insert extended. Thus each horseshoe contained an obvious and clear toe grab consisting partially of aluminum extended beyond the plane of the shoe and of the steel insert in the shoe.

Measurement of the height of the left and right shoes was made with a ruler. The middle of the toe of the left shoe was 0.75 inches, or 19.05 mm. The middle of the toe of the right shoe was 0.9 inches, or 22.86 mm.

Using these standards, the left toe grab was measured on image 2022-12-09-5739 (Appendix NN) and the right toe grab was measured on image 2022-12-09-5858 (Appendix OO). The same technique was used as described above; that is, the measurements were made using the “ruler tool” in Photoshop, with the units on the ruler converted to millimeters (on 09-5739, the ruler was 1 unit equaling 17.6 mm, and on 09-5858, the ruler was 1 unit equaling 16.8 mm). The measurements were made just to the left of the end of the toe grab. The steel part of the toe grab was separately measured at the left edge of the toe grab. The measurements revealed the following:

Shoe	Toe grab height	Steel portion of toe grab	Appendix
Left front	3.3 mm	1.7 mm	NN
Right front	4.9 mm	2.0 mm	OO

As can be seen, the measurements of the total toe grabs were fairly consistent with the above measurements of the toe grabs made from the racing photographs. The measurements further confirm that a significant portion of the toe grabs consisted of the steel inserts in the shoe.

Examination of the horseshoes also revealed that the toe portion of each shoe had a very smooth portion of the aluminum ground or worn away in the form of very symmetrical bell curve.

As with the racing photographs, the measurement of the evidence horseshoes was not exact. However, as with the racing photographs, a conservative approach was taken in making the measurements.

CONCLUSIONS

It is not possible to conclude that what appears in the racing photographs to be a toe grab is anything but a toe grab, as opposed to a reflection from the horseshoe metal or another anomaly. The appearance of the protrusion is consistent among every photograph from every photographer. Not a single photograph that could have shown a toe grab fails to show a toe grab. Moreover, the toe grabs appear similar in both hooves, which one would expect if toe grabs were used.

The conclusion from the review of these images is that all images from the race that could show a toe grab on the left and right hooves of HOT ROD CHARLIE do in fact show a toe grab.

Furthermore, the measurements made by a conservative method reveal that the front limb toe grabs likely protruded at least 3mm from the plane of the shoe.

The examination and photographs of the front horseshoes purportedly on the horse at the time of race confirms both the existence of toe grabs and the measurements made from racing photographs. They further reveal that the toe grabs were partially composed of the aluminum from the shoes, protruding as a result of the sides having been ground or worn away to create the protrusion, and partially (at or close to 50%) composed of the steel insert in the shoes.

Sincerely,

/s/ Frank T Becker

Frank T. Becker







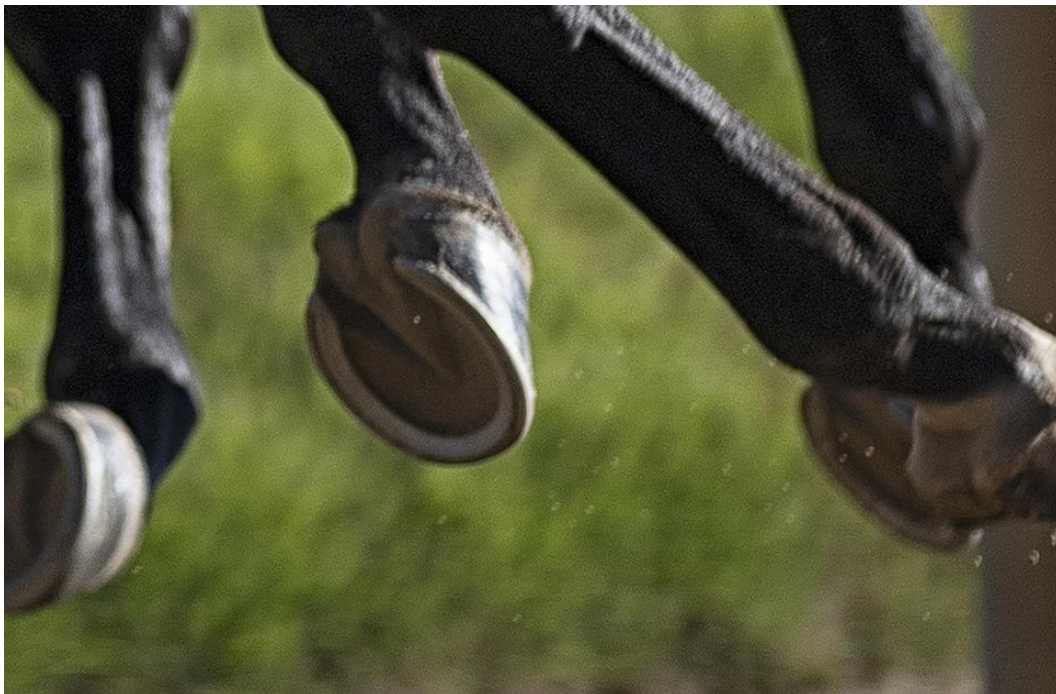












































APPENDIX Z HRC Coady 10-1 2JPG



APPENDIX AA HRC Coady 10-1 4JPG

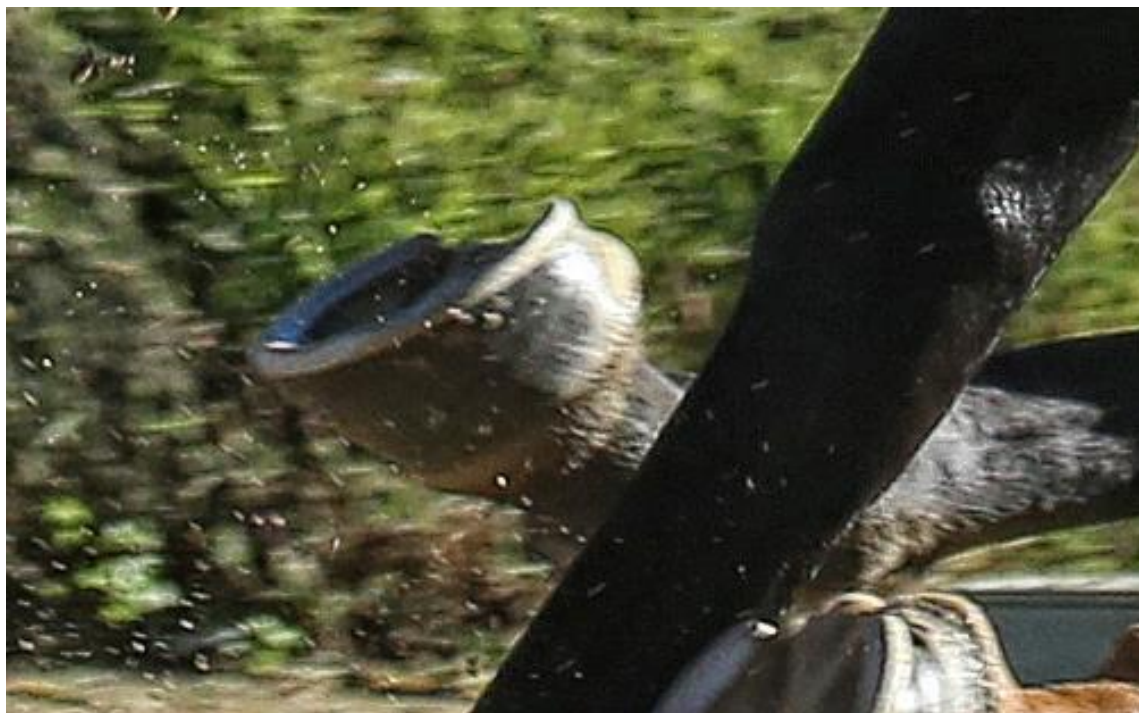


APPENDIX BB HRC Coady 10-1 13JPG

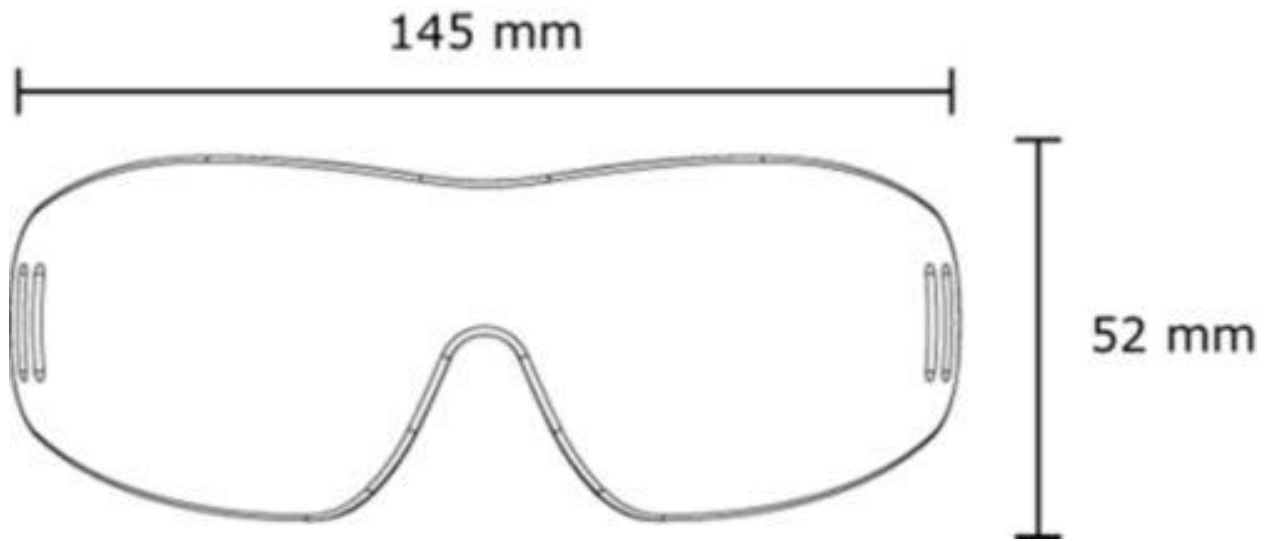


APPENDIX CC HRC Coady 10-1 14JPG

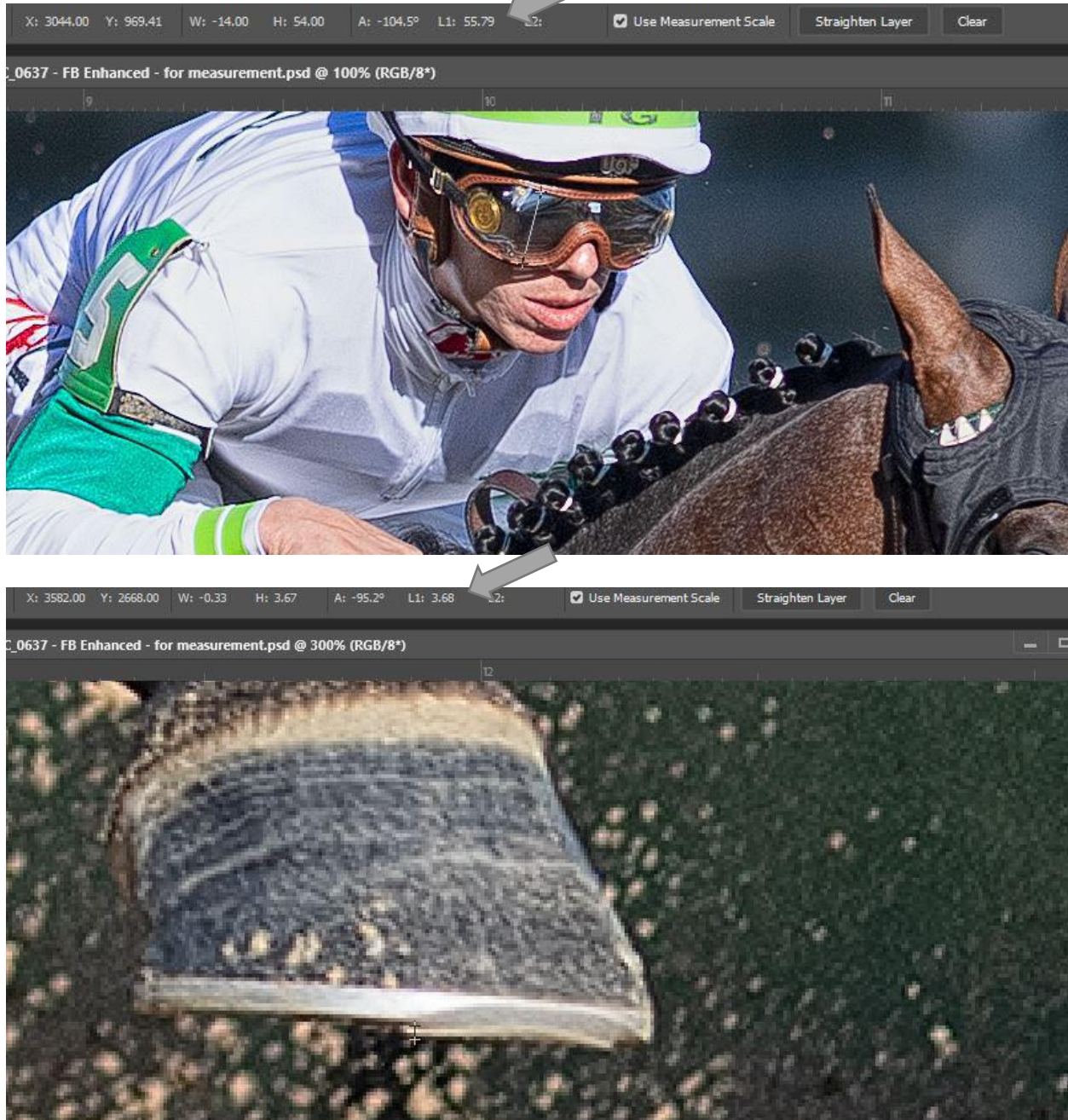




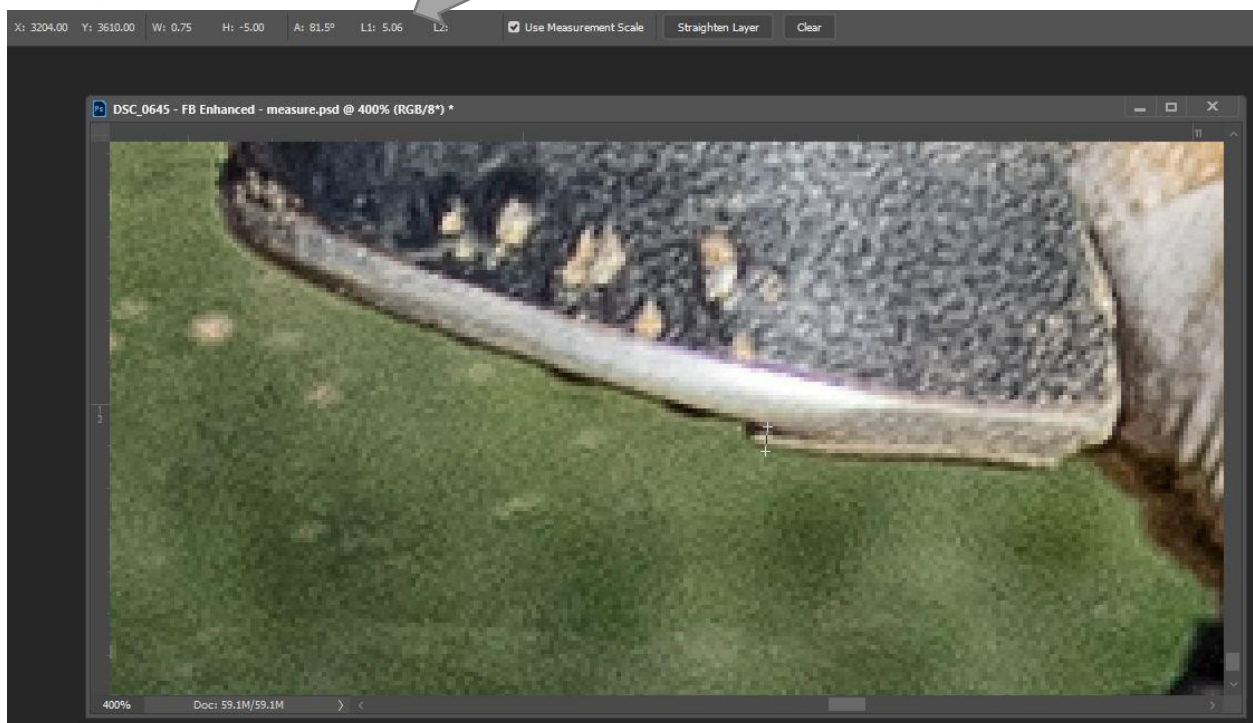
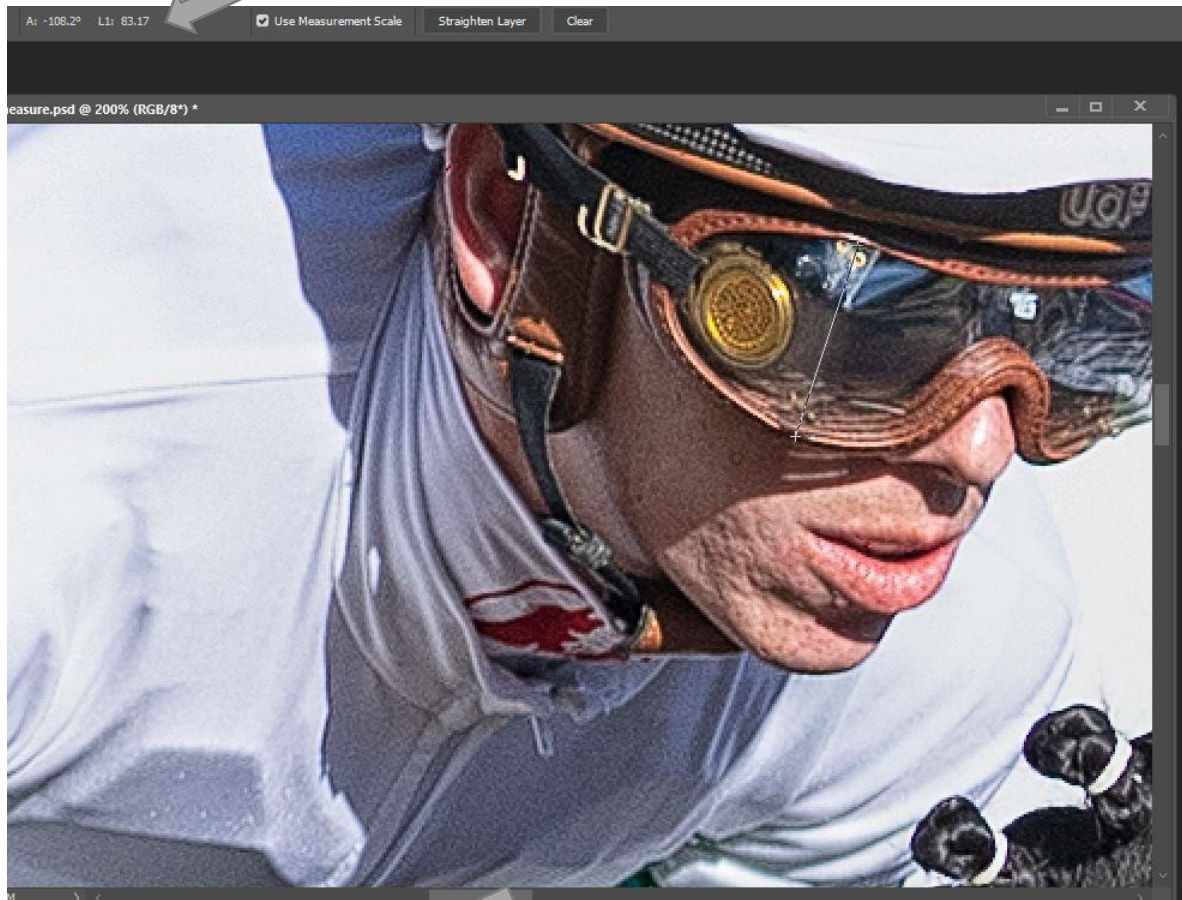
APPENDIX EE Image of Goggles with Dimensions



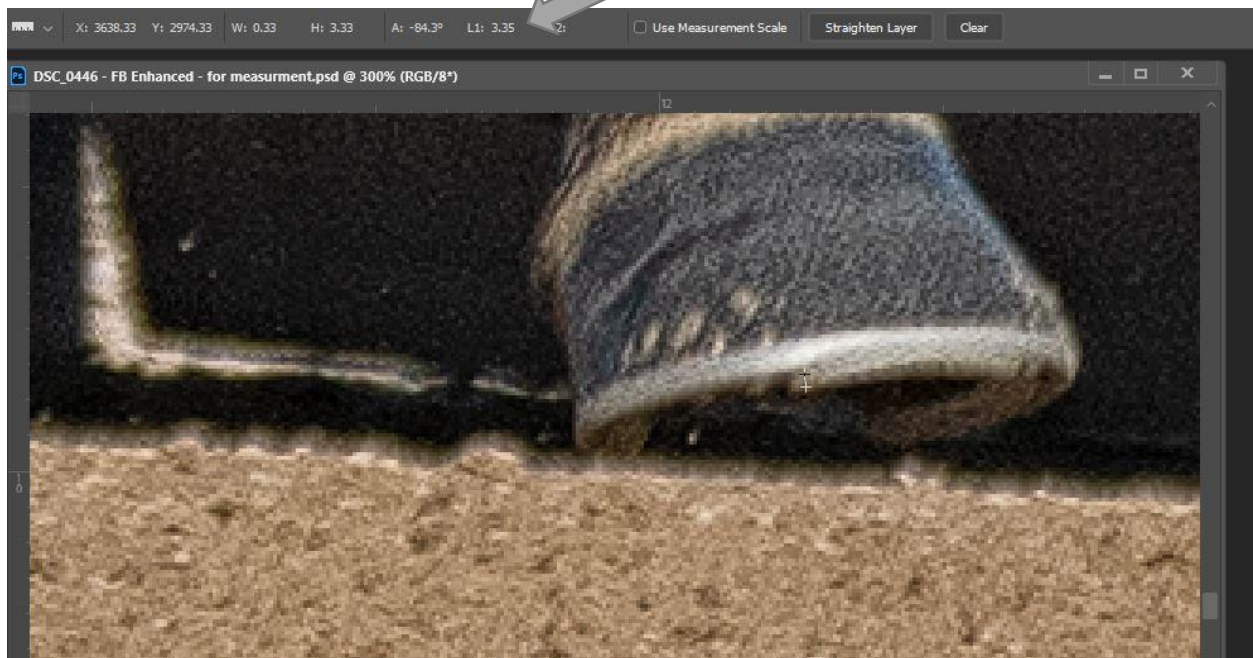
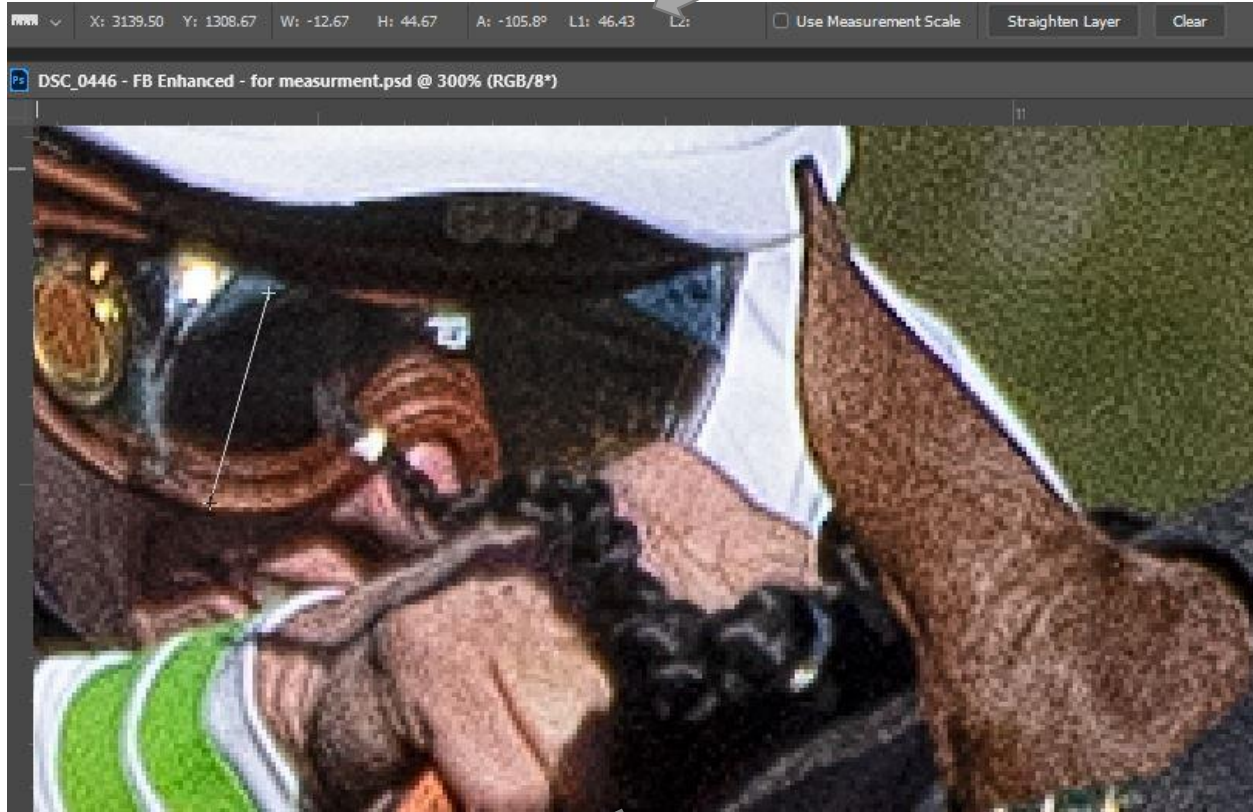
APPENDIX FF DSC_0637 Measurements



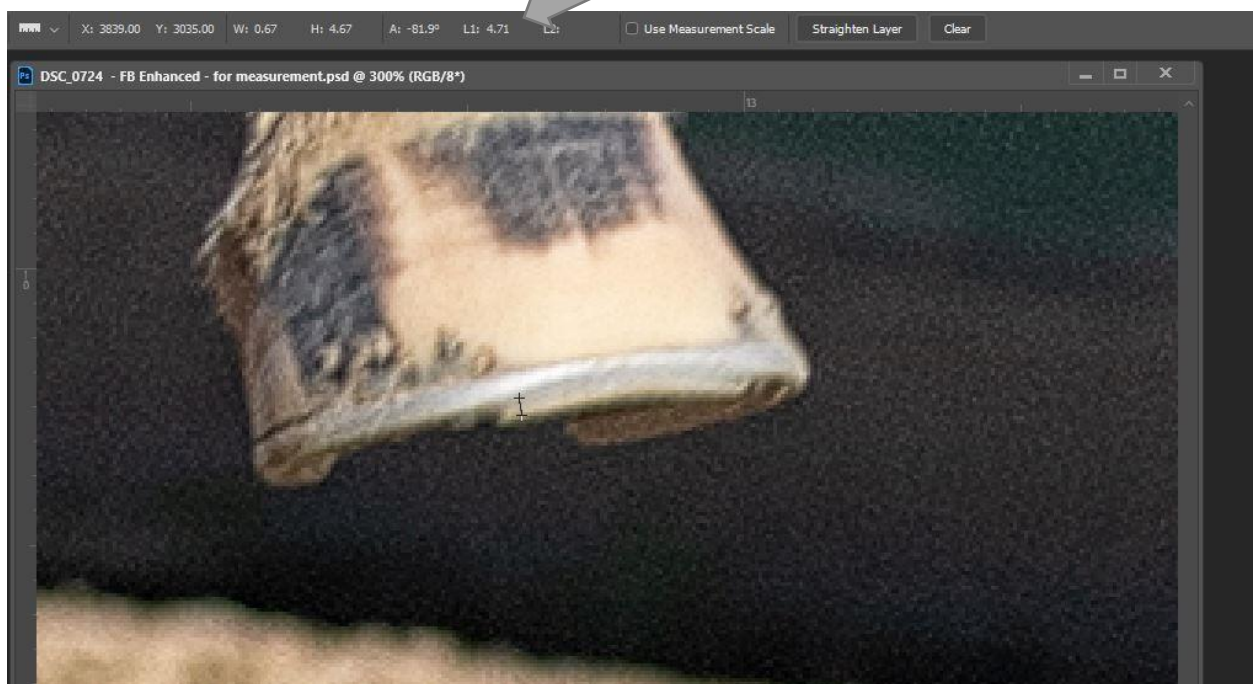
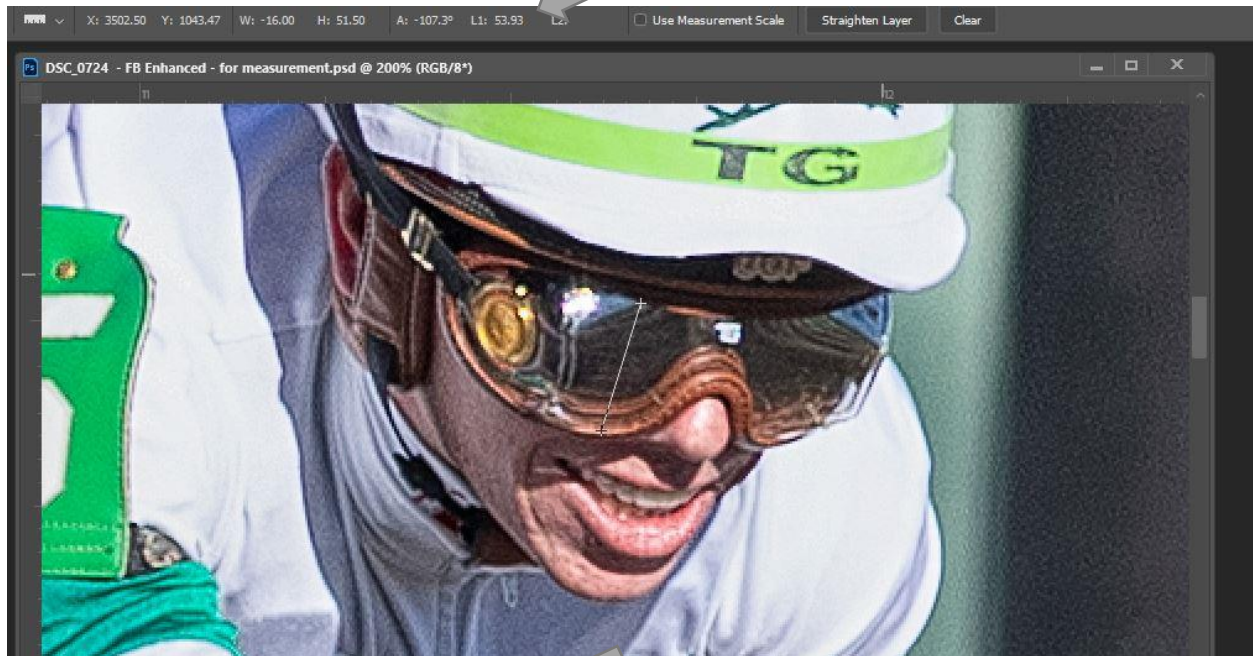
APPENDIX GG DSC_0645 Measurements



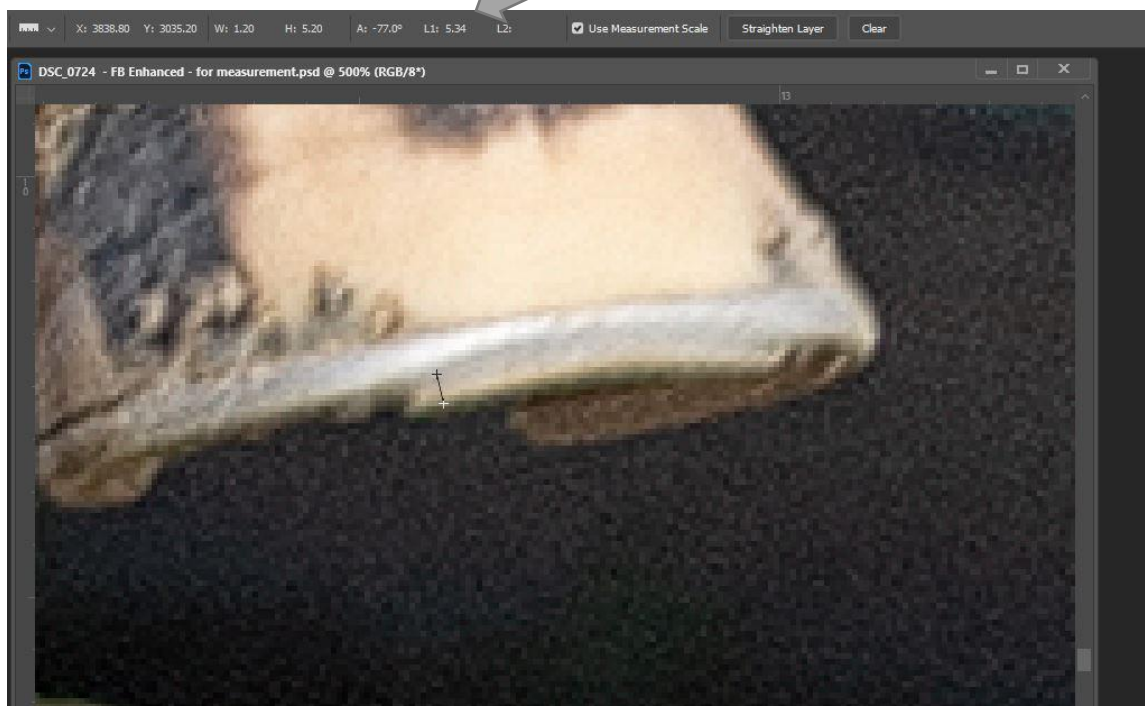
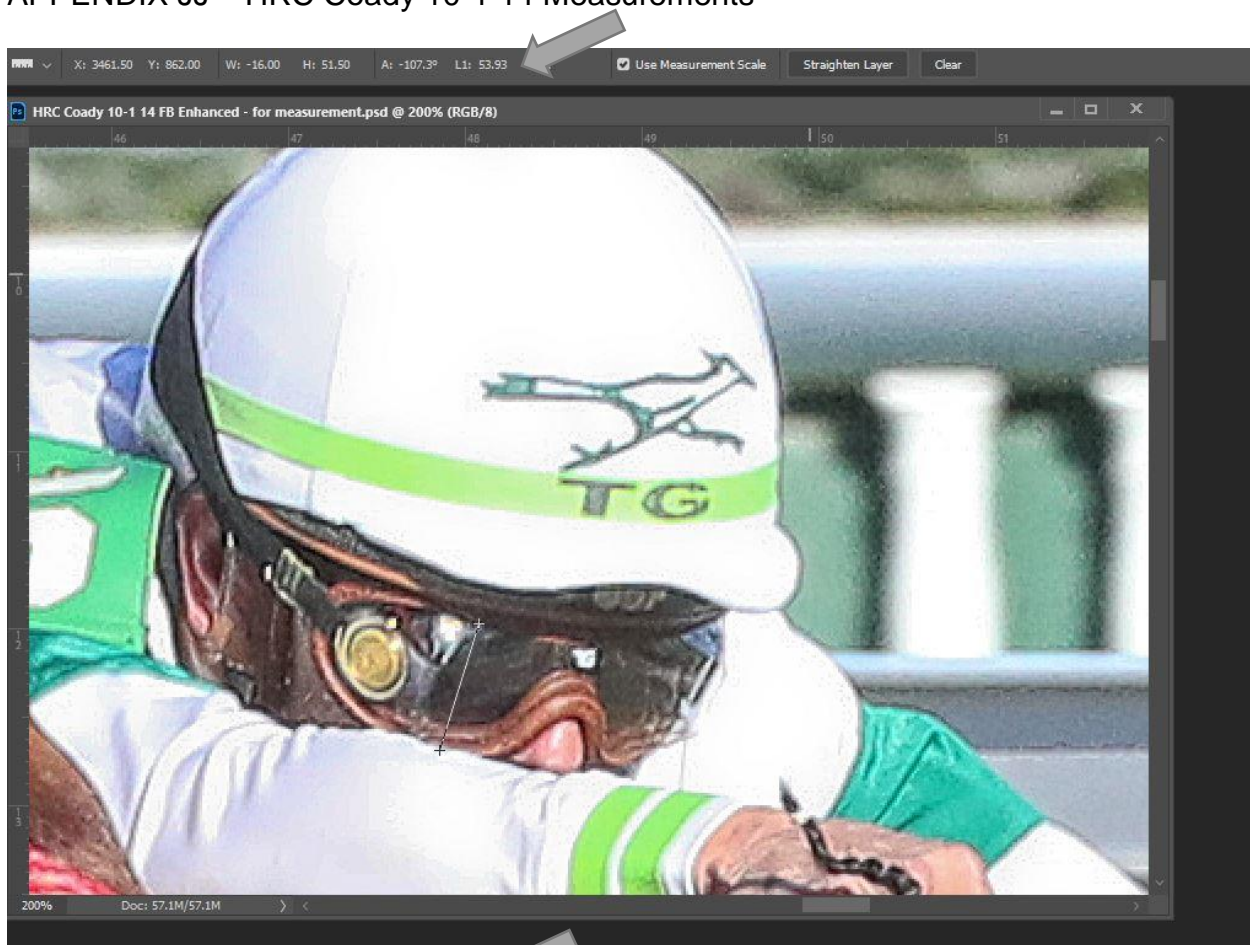
APPENDIX HH DSC_0446 Measurements



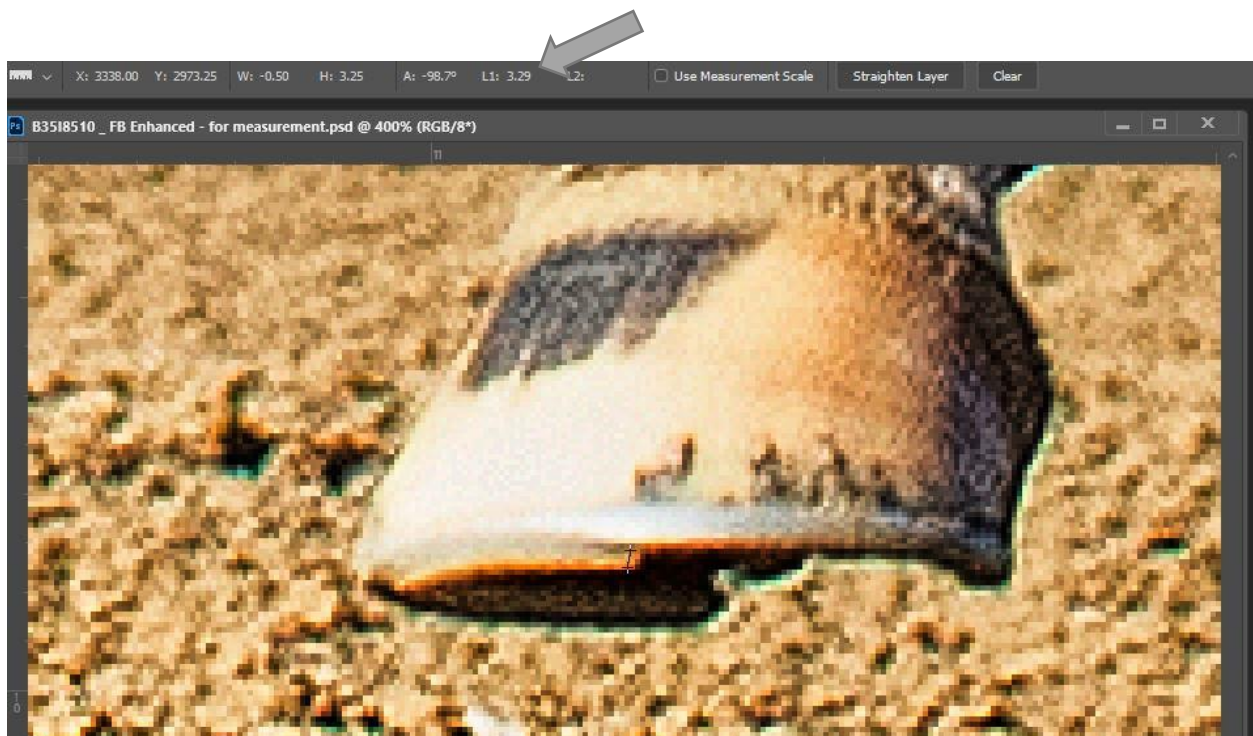
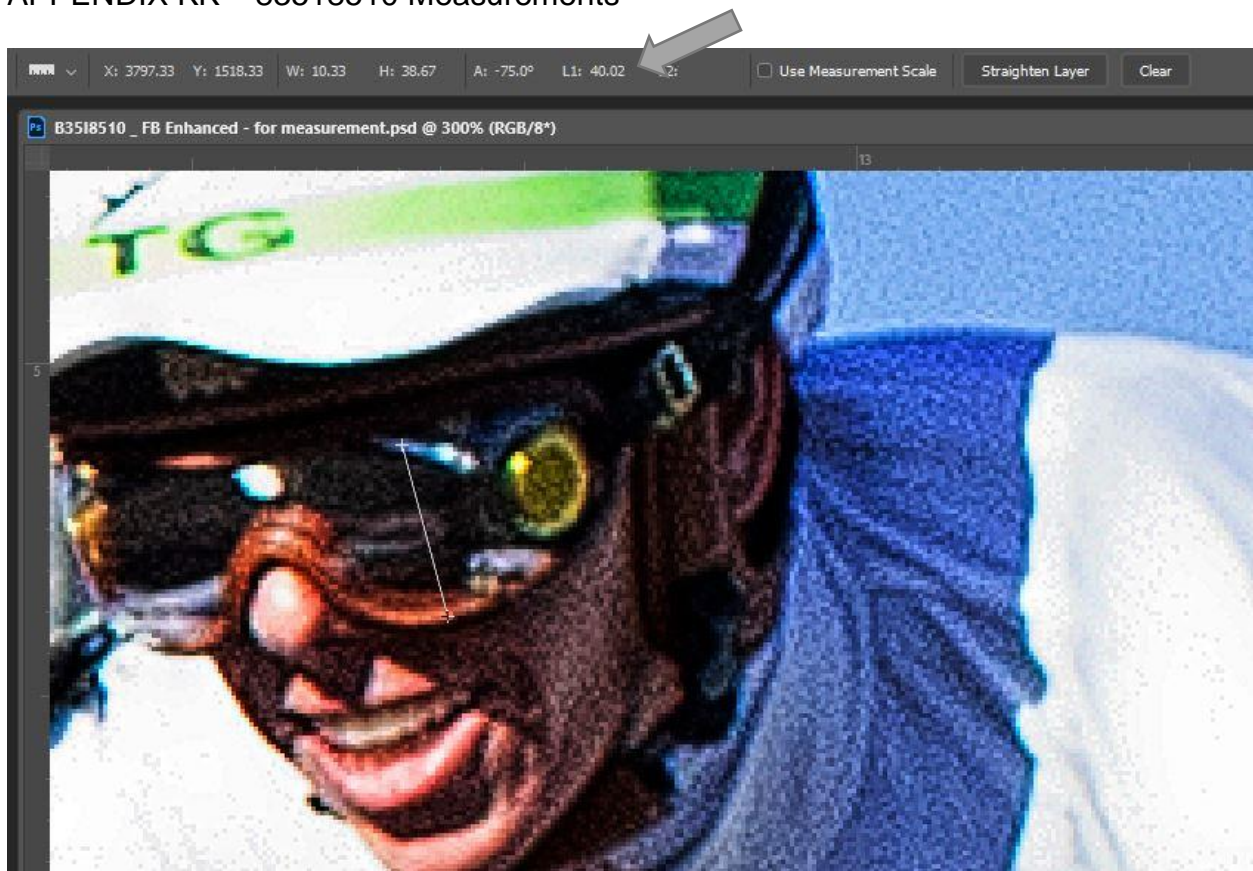
APPENDIX II DSC_0724 Measurements



APPENDIX JJ HRC Coady 10-1 14 Measurements

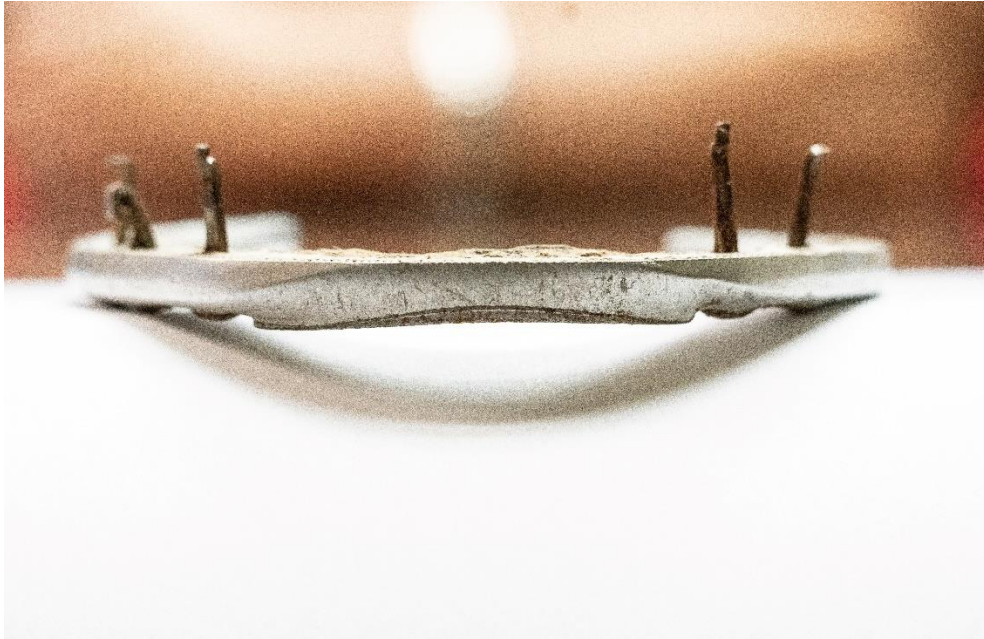


APPENDIX KK 83518510 Measurements



APPENDIX LL Sample of Photographs of Left Evidence Horseshoe

2022-12-09-5739



2022-12-09-5757



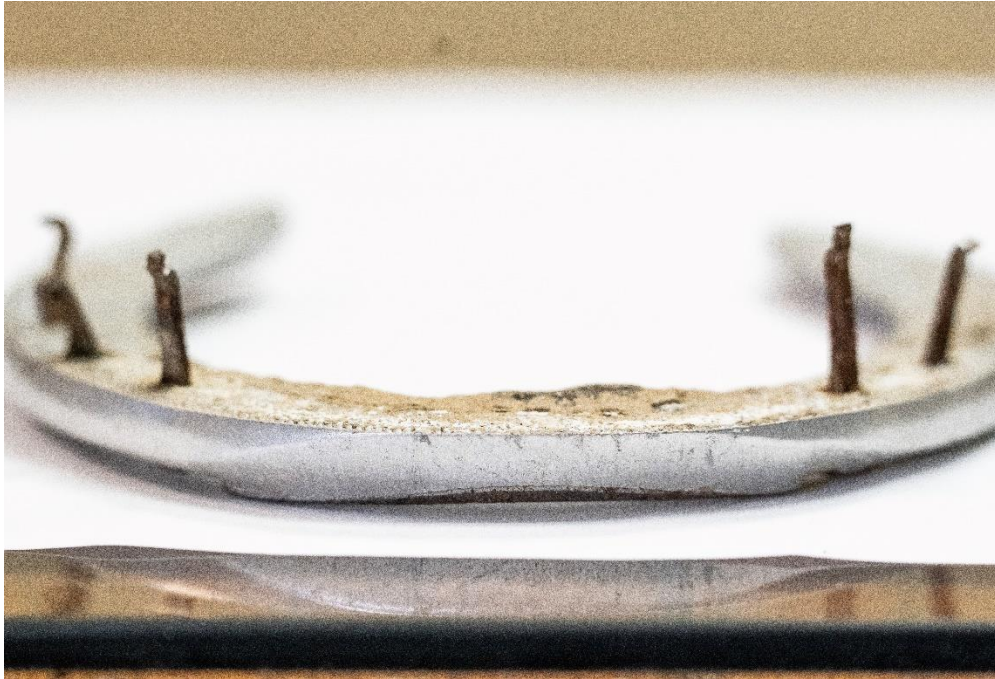
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2022-12-09-5799



2022-12-09-5813

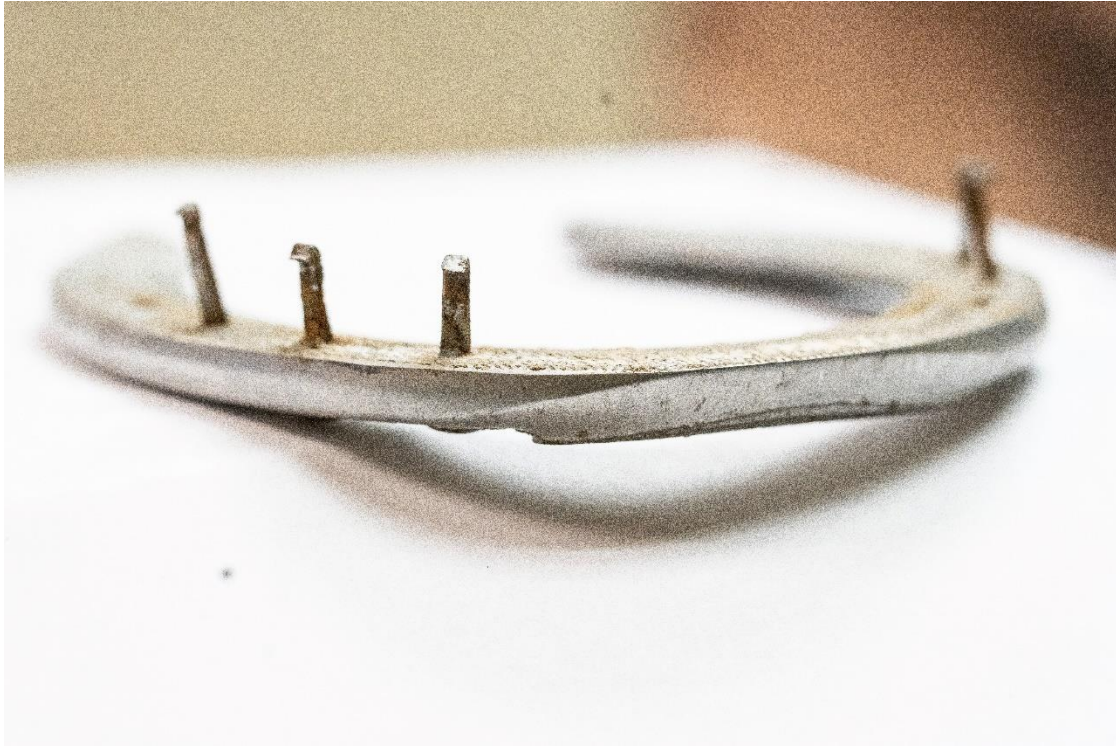


2022-12-09-5756

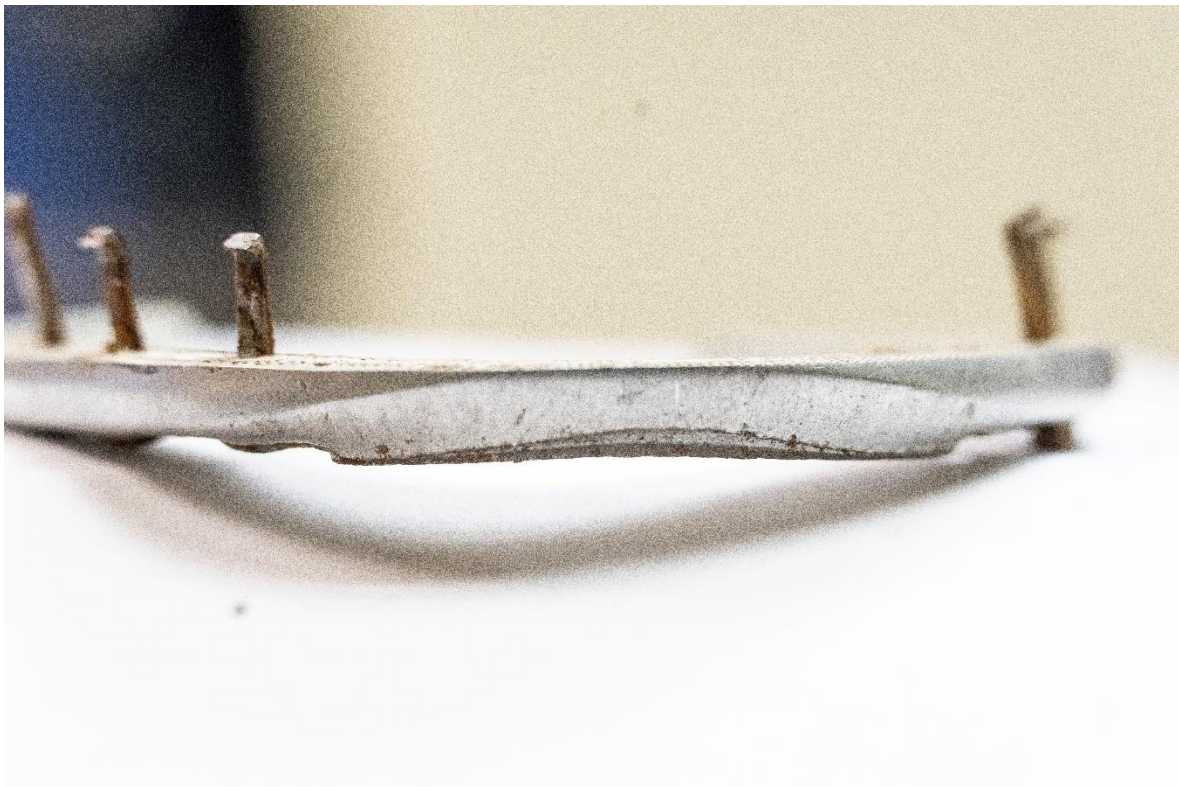


APPENDIX MM Sample of Photographs of Right Evidence Horseshoe

2022-12-09-5850



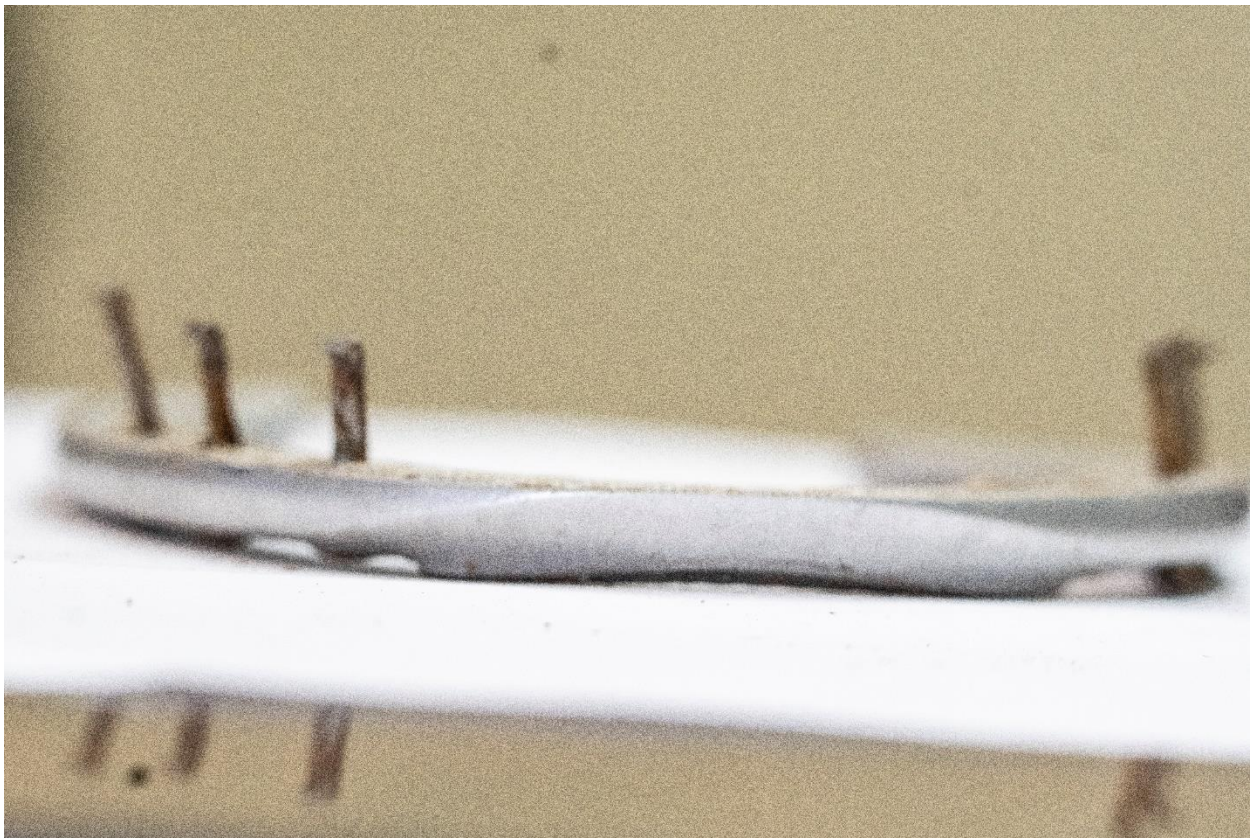
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2022-12-09-5827



2022-12-09-5868



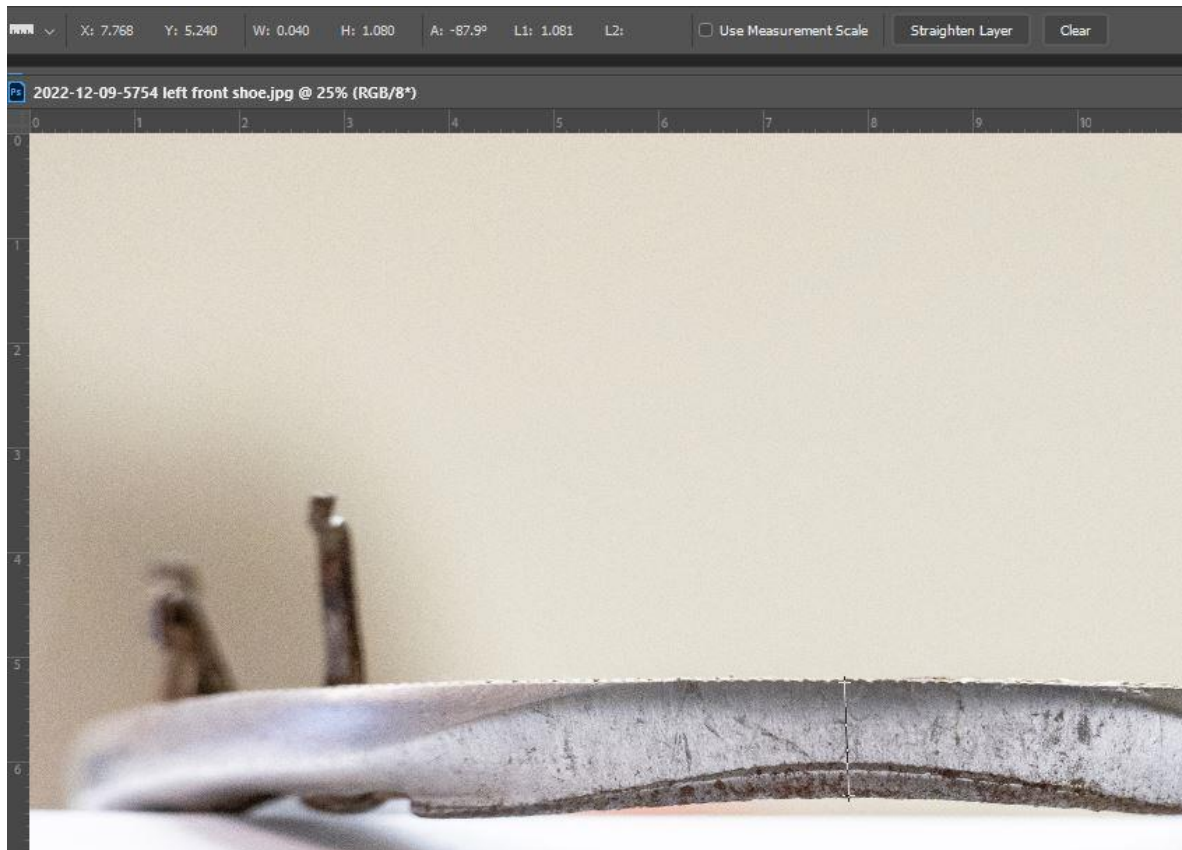
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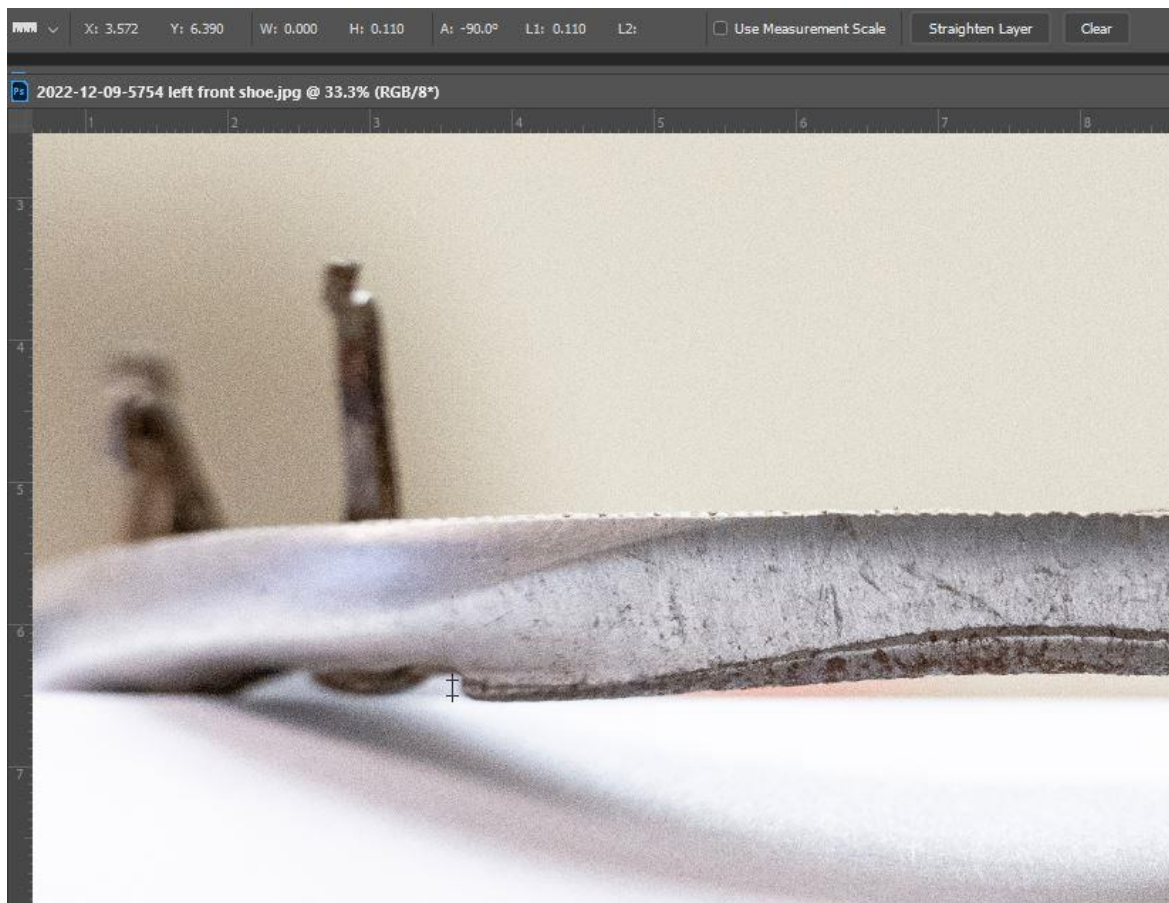
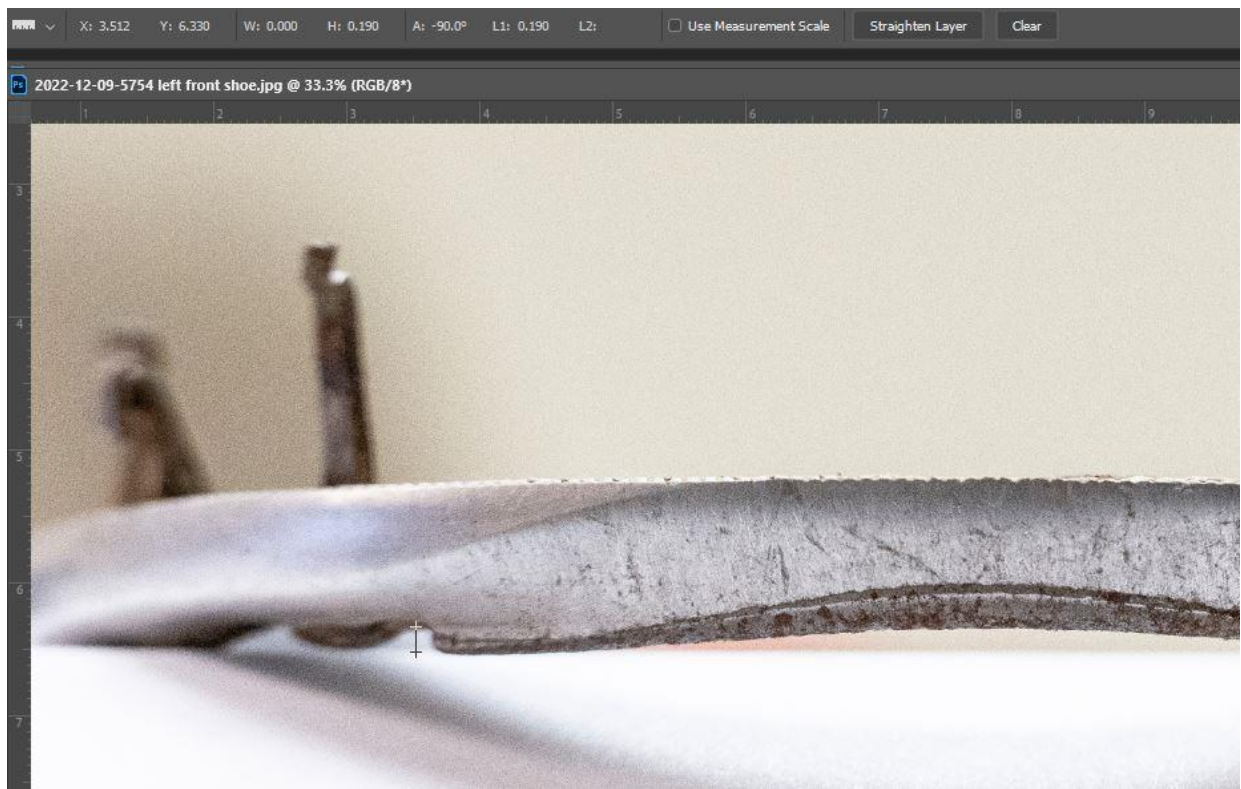


2022-12-09-5878

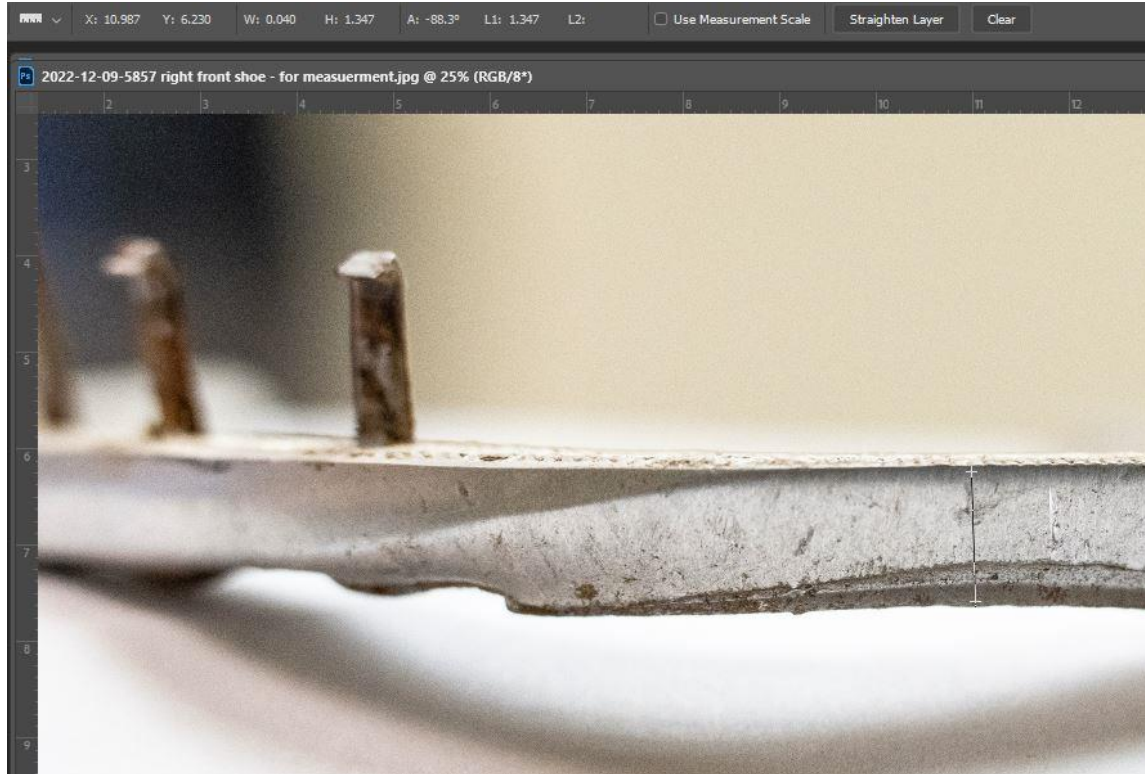


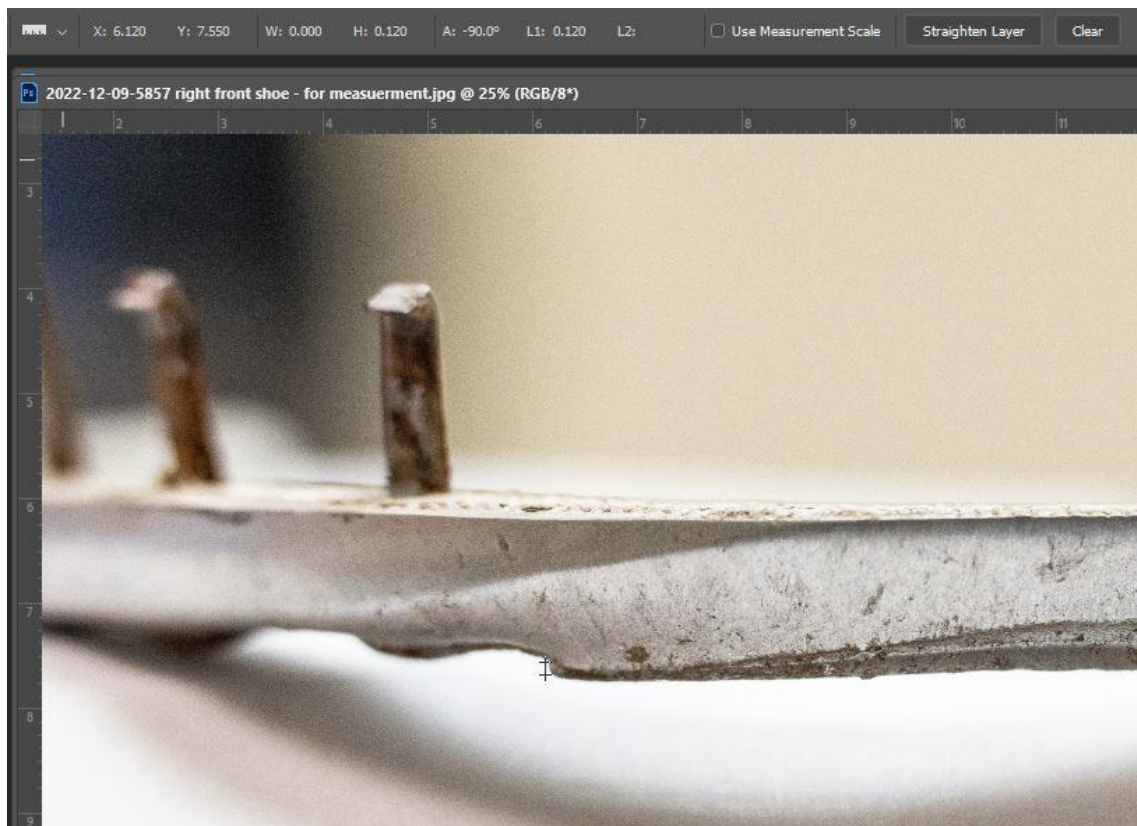
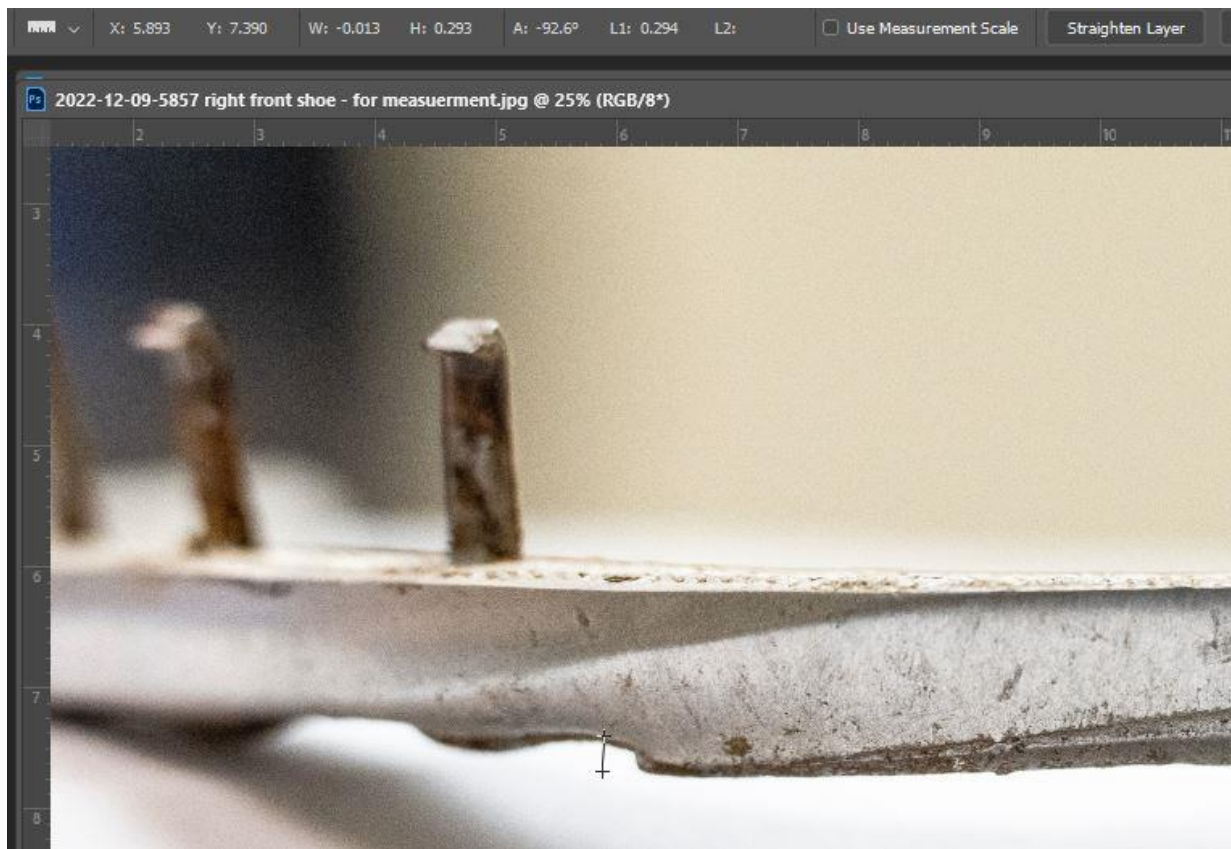
APPENDIX NN Toe Grab Measurement from Left Evidence Horseshoe





APPENDIX OO Toe Grab Measurement from Right Evidence Horseshoe





FPD PRODUCT DETAIL SHEET

K33166

Kerckhaert Tradition XT Regular Toe 6 F

The Kerckhaert Tradition series race plate with 2mm toe grab is allowed on dirt, turf and synthetic tracks throughout North America.



FEATURES

- 2mm toe grab
- High quality aluminum
- Nail pattern spread and punched finer than Kings - 6 nails to a side
- Narrower pattern than Kings
- Slight taper in width from toe to heel

BENEFITS

- Nail hole placement provides many options for nailing.
- Strong material results in fewer sprung, bent, or spread shoes to fix.
- Heels require less finish
- Easier fit for narrower feet
- Slight taper in width from toe to heel

SPECIFICATIONS

- Material : Aluminum
- Size : 6
- Discipline : Race
- Pattern : Front
- Clips : Unclipped
- FIA Inches : 13-1/4
- Length (IN) : 4-7/8
- Width (IN) : 5
- Thickness (mm) : 8.5 mm
- Recommended Nail : 3.5 Race, 3.5 Race XL
- Other Nail Options : 4.5 Race
- Cu or Regular or Both : B
- Weight : 0.23

Other Sizes:

- Kerckhaert Tradition XT Regular Toe 3 F
- Kerckhaert Tradition XT Regular Toe 3 H
- Kerckhaert Tradition XT Regular Toe 4 F
- Kerckhaert Tradition XT Regular Toe 4 H
- Kerckhaert Tradition XT Regular Toe 5 F
- Kerckhaert Tradition XT Regular Toe 5 H
- Kerckhaert Tradition XT Regular Toe 6 F
- Kerckhaert Tradition XT Regular Toe 6 H
- Kerckhaert Tradition XT Regular Toe 7 F
- Kerckhaert Tradition XT Regular Toe 7 H
- Kerckhaert Tradition XT Regular Toe 8 F



PO Box 1328
Shelbyville, KY 40066
www.farrierproducts.com

Toll Free (800) 468-2879
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