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IN THE COURT OF CLAIMS OF OHIO

RAYMOND WILLIAMS : CASE NO. 2016-00199-AD
Plaintiff :
v. :
THE UNIVERSITY OF AKRON : INVESTIGATION REPORT
Defendant

Defendant, The University of Akron (University), in response to the allegations made in Plaintiff's Claim Form, submits the following Investigation Report:

I. FACTUAL BACKGROUND

Plaintiff filed a Claim Form alleging that on November 16, 2015 he attended a University of Akron Basketball game at the James A. Rhodes (JAR) Arena and sat in a seat which broke underneath him, resulting in injuries to his lower back, right hip and right knee. Plaintiff attached various chiropractic and medical records to his Claim Form, purportedly to demonstrate the nature and extent of his injuries caused by this incident. However, Plaintiff's Claim Form fails to establish a viable cause of action in negligence against the University.

The University admits that Plaintiff attended a men's basketball game in the University's JAR Arena on November 16, 2015 and that Plaintiff was involved in an incident. Immediately after the incident, an usher, Cindy Darrow, responded to the scene to access the situation and help Plaintiff. Ms. Darrow called her supervisor, Elizabeth "Lizzy" Pannucci, Manager of Operations and Events who arrived on the scene. Both Ms. Darrow and Ms. Pannucci spoke with Plaintiff

who reported to them that while he was attempting to sit in a seat located in the reserved section 1 A, Row A, seat 6, the seat bottom dropped to the ground but that Mr. Williams said that he caught himself on the arm rests and did not fall. (*See*, Pannucci Affidavit at Par. 4-5). Both Ms. Darrow and Ms. Pannucci asked Plaintiff if he needed medical treatment or wanted to call an ambulance. Plaintiff declined both. (*Id.* at Par. 6). He did not complete an incident report either. Because Plaintiff left the JAR Arena without filling out an incident report, per University protocol, Ms. Pannucci filled out an incident report. (*Id.* at Par. 7 and Exhibit A attached to Pannucci Affidavit).

In her discussion with Plaintiff, Ms. Pannucci learned that Plaintiff did not have a ticket for the reserved seat in which he was sitting where the incident occurred. (*Id.* at Par. 8). Rather, Plaintiff had a general admission ticket for that game which was valid for bleacher seating only and not for the reserved seats where he was sitting. (*Id.*) Plaintiff used a veteran's identification card and received a complimentary general admission ticket which was valid for bleacher seating only at the men's basketball game. (*Id.* at Par. 9) However, on November 16, 2015 Plaintiff did not sit in the bleachers. (*Id.* at Par. 5, 8). Instead, Plaintiff exceeded the permission of the grant of his complimentary ticket to bleacher seating and he chose to sit in the reserved seating area of the JAR Arena which has fold down seats with backs and arm rests. Specifically, Mr. Williams sat in reserved section 1 A, Row A, Seat 6. (*Id.* at Pars. 5, 8 and Incident Report attached to Pannucci Affidavit).

After this incident Ms. Pannucci observed Mr. Williams in attendance at multiple men's basketball games at the JAR Arena through the remainder of the basketball season during the fall of 2015 thru the spring of 2016 and, based upon her observations, Mr. Williams did not appear to

be physically impaired in any way or in pain. (*Id.* at Par. 10).

The University conducts comprehensive safety and maintenance inspections of the seats in its athletic venues including the JAR Arena approximately annually by an external company specializing in the inspection and maintenance of athletic arena seating. (*See*, Tiller Affidavit at Par. 2-3; Hammond Affidavit at Par. 4). When these inspections reveal safety or mechanical concerns, those are reported and addressed. (Tiller Affidavit at Par. 4; Hammond Affidavit at Par. 4). In addition, the University performs informal inspections and necessary maintenance of its athletic facilities, including the JAR Arena throughout the year. (*See*, Hammond Affidavit at Par. 3; Pannucci Affidavit at Par. 3). These efforts are designed to keep the University's athletic venues safe. At no time was the University on notice of any safety or maintenance deficiencies involving the seat in which Mr. Williams was sitting when he was allegedly injured on November 16, 2015. (*See*, Affidavits of Tiller at Par. 2, 5; Hammond at Par. 5, 6; and Pannucci at Par. 3, 5).

II. LAW AND ARGUMENT

A. At best, Plaintiff was an invitee when he visited the JAR Arena on November 16, 2015 and as such, failed to demonstrate that the University breached a duty of ordinary and reasonable care from unreasonable risk of harm which the University either knew or had reason to know existed.

In order to establish a claim for negligence, Plaintiff must prove that: 1) the University owed him a duty; 2) the University breached that duty; and 3) the breach was the proximate cause of Plaintiff's injuries. *Mussivand v. David* (1989), 45 Ohio St.3d 314, 318. The absence of any one of these elements renders a Plaintiff's claim of negligence invalid. *Jeffers v. Olexo* (1989), 43 Ohio St.

3d 140, 142.

In cases of premises liability, the status of the person who enters upon the land of another defines the scope of the legal duty that the landowner owes the entrant. *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 315. “The philosophy underlying all the decisions with respect to host and guest relationships is that the host extends his hospitality to the guest and that the guest accepts hospitality.” *Scheibel v. Lipton* (1951), 156 Ohio St. 308, 330. An owner of a premises owes a duty to exercise ordinary and reasonable care to protect invitees from unreasonable risks of physical harm of which the owner knows or has reason to know. *Perry v. Easton Realty Co.* (1978), 53 Ohio St. 2d 51.

An owner of a premises, however owes no duty to protect invitees from all conceivable dangers they might face, while on the premises, because the owner is not an insurer of the safety of its invitees. *Cornell v. Aquamarine Lodge* (1983), 12 Ohio App. 3d 148, 150. Instead an owner's liability "to an invitee for negligence in failing to render the premises reasonably safe for the invitee, or in failing to warn him of dangers thereon, must be predicated upon a superior knowledge concerning the dangers of the premises to persons going thereon." *Debie v. Cochran Pharmacy Berwick, Inc.* (1967), 11 Ohio St. 2d 38, 40. Consequently, Plaintiff bears the burden of proof to demonstrate that Defendant was on notice or aware of the allegedly defective condition of seat. *Presely v. Norwood* (1971), 36 Ohio St. 2d 29.

Assuming *arguendo*, that Plaintiff's status was that of an invitee, Plaintiff has failed to demonstrate that the University breached a duty or ordinary and reasonable care from unreasonable risk or harm or that it had any notice of a defect with the seat in which he was allegedly injured on

November 16, 2015. The evidence produced by the University shows the opposite.

To help ensure the safety of its facilities, the University routinely hires an outside company to conduct a comprehensive inspections of its athletic venues, including the JAR, which are conducted approximately annually. (*See*, Affidavits of Tiller at Par. 2, Hammond at Par. 4 and Pannucci at Par. 3). The last such comprehensive inspection of the seating areas in the JAR Arena was conducted on June 11, 2015 by H&H Enterprises, a company specializing in inspecting, repairing and performing maintenance on bleachers and seating in athletic venues to ensure that they are mechanically sound and compliant with the applicable safety code, which in the case of the University is the Ohio Fire Code Section 1028.1.1 which references International Code Council Standard 300-2007, Standard for Bleachers, Folding and Telescoping Seating and Grandstands. (*See*, Tiller Affidavit at Par. 3). This inspection did not reveal any deficiencies with respect to the seat in which Plaintiff was seated on November 16, 2015. (*Id.* at Par. 3-5). Furthermore, a review of the past several such inspections dating back to 2010 did not reveal any safety issues or mechanical deficiencies with this seat. (*Id.* at Par. 5),

In addition to these comprehensive annual inspections, throughout the year, the seating areas in the JAR are inspected visually by the University's Athletics staff, including game managers, ushers, management staff and the Associate Director of Athletics for Facilities and Operations prior to events including basketball games. (*See*, Affidavits of Hammond at Par. 3 and Pannucci at Par. 3). If a member of the staff notices that a chair is not returned to its proper position, it is checked and adjusted or repaired, if necessary. (Pannucci Affidavit at Par. 3). Also, if a patron or other individual reports that a seat is in need of repair, that seat is examined and

adjusted and repaired as necessary. (Hammond Affidavit at Par. 3).

These collective and sustained efforts are to help ensure that the seating in the JAR is well maintained and as safe as possible and demonstrate that the University far exceeds its duty of ordinary and reasonable care to protect invitees from unreasonable risks of physical harm. In addition, the University had no notice of any defects with the seat in which Plaintiff was allegedly injured on November 16, 2015. (See, Affidavits of Tiller at Par. 5, Hammond at Par. 6 and Pannucci at Par. 5). As such, Plaintiff has failed to demonstrate that the University breached a duty of ordinary and reasonable care or that his alleged injuries were caused by any defect in the seat that would have been discovered through the exercise of ordinary care, Plaintiff's claim for negligence against the University should be denied.

B. By choosing to sit in a reserved seat when Plaintiff was only issued a complimentary ticket for a seat in the bleachers, Plaintiff exceeded the grant of the University's invitation and changed his status from that of an invitee to that of a licensee or trespasser, thereby lowering the University's duty to merely refraining from willful, wanton or reckless conduct that is likely to injure him, the breach of such duty Plaintiff has failed to prove.

In the alternative, University owed Plaintiff even a lower duty of care than that owed to an invitee because the facts demonstrate that Plaintiff exceeded the scope of his invitation at the JAR Arena. On November 16, 2015, Plaintiff was issued a complimentary ticket to a men's basketball game which provided him access only to a seat in the bleachers. (See, Pannucci Affidavit at Par. 8). Instead, that day Plaintiff chose to sit in a reserved seat which is where the incident occurred.

(*Id.*) By attempting to sit in the reserved seating area, Plaintiff exceeded the scope of his invitation, thereby becoming either a licensee or trespasser, and as a result lowered the University's duty to him.

A licensee is "a person who enters the premises of another by permission or acquiescence, for his own pleasure or benefit, and not by invitation." *Provencher v. Ohio Dept. of Transp.* (1990), 49 Ohio St.3d 265, 266. A person who enters without invitation or permission purely for his own purposes or convenience is a trespasser. *McKinney v. Hartz & Restle Realtors, Inc.* (1987), 31 Ohio St.3d 244, 246. Ordinarily, a landowner owes no duty to a licensee or trespasser except to refrain from willful, wanton, or reckless conduct that is likely to injure him. *Gladon v. Greater Cleveland Regional Transit Auth.* (1996), 75 Ohio St.3d 312, 317. Willful conduct implies intent, purpose, or design to injure. *Id.* at 319. Wanton conduct involves the failure to exercise any care whatsoever toward those to whom a duty is owed, occurring under the circumstances in which there is great probability that harm will result. *Id.*

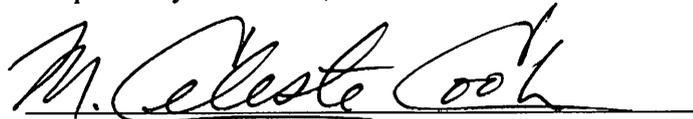
There is absolutely no evidence to suggest that the University breached any duty toward Plaintiff such as engaging in willful, wanton or reckless conduct or otherwise engaged in any intentional conduct designed to injure Plaintiff when he attended the men's basketball game on November 16, 2015. Therefore, Plaintiff's Claim Form fails to state any claim against the University for which he is entitled to relief and must be dismissed.

III. CONCLUSION

Whether Plaintiff was an invitee, licensee or trespasser when he visited the JAR Arena on November 16, 2015, the evidence fails to show that the University breached any duty owed to Plaintiff.

For all of the above-stated reasons, The University of Akron respectfully requests that this court dismiss Plaintiff's Claim Form and enter judgment in favor of the University.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "M. Celeste Cook", written over a horizontal line.

M. Celeste Cook (ID # 0039004)
Associate Vice President and Deputy General Counsel
The University of Akron
Akron, OH 44325-4706
Telephone: (330) 972-5787
Fax: (330) 384-2611
Counsel for Defendant

IN THE COURT OF CLAIMS OF OHIO

RAYMOND WILLIAMS)	
)	
Plaintiff	)	CASE NO. 2016-00199-AD
)	
vs.)	
)	
THE UNIVERSITY OF AKRON	)	<u>AFFIDAVIT OF</u>
)	
	)	<u>ELIZABETH PANNUCCI</u>
Defendant.)	
)	
STATE OF OHIO)	
	)	ss:
COUNTY OF SUMMIT)	

Elizabeth Pannucci, being first duly sworn, deposes and states as follows:

1. My name is Elizabeth “Lizzy” Pannucci. I am currently employed by The University (University) as the Manager of Operations and Events and have held that position since November 1, 2015. I have been an employee of the University’s Department of Athletics since July 1, 2013.

2. Part of my duties and responsibilities as the Manager of Operations and Events is to oversee the operations at University men’s basketball games including preparing the venue for the game and supervising ushers.

3. The venue of home games for the University’s men’s basketball games is generally the James A. Rhodes (JAR) Arena. Prior to basketball games and periodically throughout the year, the seats in the arena are visually inspected. If one of our staff notices that a chair is not returned to its proper position, it is checked and adjusted or repaired, if

necessary. Also, if a patron or other individual reports that a seat is in need of repair, that seat is examined and repaired before the next game or event. I am also aware that all of the seats in the JAR are thoroughly inspected approximately annually by an external company specializing in conducting safety inspections of athletic venues. These collective efforts are to help ensure that the seating in the JAR is well maintained and as safe as possible to avoid injuries.

4. On November 16, 2015, I was on duty at the University's James A. Rhodes (JAR) Arena where a men's basketball game was being played against Hiram College. During that game, one of our ushers, Cindy Darrow called me on the radio and informed me that a fan may have been injured in a seat. Ms. Darrow gave me the location and I immediately went there.

5. I spoke with Ms. Darrow and a fan, Ray Williams, and learned that as Mr. Williams was attempting to sit in a seat in reserved section 1A, Row A, seat 6, the seat bottom dropped to the ground but that Mr. Williams caught himself on the arm rests and did not fall. Prior to this incident, I was not aware of any mechanical or safety issues pertaining to this seat.

6. Ms. Darrow and I repeatedly asked Mr. Williams if he needed medical treatment or wanted us to call an ambulance. Mr. Williams denied both.

7. On November 16, 2015, I completed an incident report regarding this matter per University protocol, a copy of which is attached as Exhibit A.

8. In our discussion with Mr. Williams, we discovered that he did not have a ticket for the reserved seat in which he was sitting where the incident occurred. Rather, Mr.

Williams had a general admission ticket for that game which was valid for bleacher seats only and not seats in the reserved section.

9. Upon subsequent investigation, I learned that Mr. Williams is neither a season ticket holder nor a purchaser of individual tickets to University men's basketball games. Rather, in the past he has produced a Veteran's ID--and often multiple such IDs—to receive complimentary general admission tickets to University basketball games which are valid only for bleacher seating.

10. I observed Mr. Williams in attendance at several University men's basketball games at the JAR after this incident through the remainder of the season in the fall of 2015 thru the spring of 2016. At no time did Mr. Williams appear to be physically impaired in any way or in pain.

FURTHER AFFIANT SAYETH NAUGHT.



Elizabeth Pannucci

Sworn to before me and signed in my presence this 11th day of May, 2016.



NOTARY PUBLIC

My commission expires on 12/12/2016.



Sharon Ann Messner
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 12/12/2016



UNIVERSITY OF AKRON ATHLETIC FACILITIES INCIDENT REPORT

*did not have ticket
or GA

Event: MBB v. Hiram

Date: 11/16/15 Time: 7:41 Seat Location: _____

Name of person involved: RAY WILLIAMS Ag: 59 Sex: M

Address: 1108 Super Genius St Phone: 330-701-8026

Employed by: RETIRED

Type of incident: SEAT BOUNCE

Place of incident: THE JAR

Cause of incident: _____

Reported by: LIZZY

Description of injury (if any): lower back

Aid rendered: _____ By whom: _____

WITNESSES

Name: Cindy Darrow Phone: 330 714 0990

Address: _____

Name: _____ Phone: _____

Address: _____

Employee(s) who saw or have knowledge of incident: _____

Comments (What, When, Why, Where, Who): 1A 11/16/15 - sat in seat

Row A seat leaned forward - he

did not fall.

Signature of person making this report: Cindy Darrow

Print name: _____

Date: _____

IN THE COURT OF CLAIMS OF OHIO

RAYMOND WILLIAMS)	
)	
Plaintiff	)	CASE NO. 2016-00199-AD
)	
vs.)	
)	
THE UNIVERSITY OF AKRON	)	<u>AFFIDAVIT OF DAVID E. TILLER</u>
)	
Defendant.)	
)	
STATE OF OHIO)	
	)	ss:
COUNTY OF SUMMIT)	

David E. Tiller, being first duly sworn, deposes and states as follows:

1. My name is David E. Tiller. I am currently employed by The University of Akron (University) as the Director of Environmental and Occupational Health and Safety and have held this position since April 18, 2011. Prior to that, I held the position of Interim Director of Environmental and Occupational Health and Safety since 2010.

2. Part of my duties and responsibilities as the Director of Environmental Health & Occupational Safety are to oversee the University’s facilities to ensure that they are properly maintained and adhere to the appropriate safety standards. To help achieve this end, at my direction, a periodic (approximately annually) comprehensive inspection is conducted of all of our athletic facilities, specifically: James A. Rhodes Arena (JAR), Stile Fieldhouse, Central Hower High School Main Gymnasium, Central Hower High School Auxiliary Gymnasium, Ocasek Natatorium, InfoCision Stadium-Summa Field, Lee Jackson Soccer Stadium, Lee

Jackson Track Complex, Lee Jackson Baseball Complex, Lee Jackson Softball Complex and Wayne College-Boyer Gymnasium.

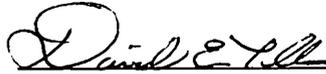
3. The last such comprehensive annual inspection of the University's athletic facilities was conducted on June 11, 2015 by H&H Enterprises from Grand Haven, Michigan, a company which specializes in inspecting, repairing and performing maintenance on bleachers and seating in athletic venues to ensure that they are mechanically sound and compliant with the applicable safety code, which in the case of The University of Akron is the Ohio Fire Code Section 1028.1.1 which references International Code Council Standard 300-2007, Standard for Bleachers, Folding and Telescoping Seating and Grandstands. A copy of the report generated in connection with the June 11, 2015 inspection is attached as Exhibit A.¹ The safety inspections performed by H&H Enterprises on June 11, 2015 included the JAR, an arena with seating to accommodate 7,827 spectators, both bleacher and platform seating. This inspection was thorough and each seat was individually inspected to determine whether any mechanical or safety deficiencies existed; if any such deficiencies were discovered during this inspection, they were recorded in the report furnished to the University. Maintenance or safety issues identified as a result of these annual inspections are reported to the University's Physical Facilities department for follow up and repairs, if necessary.

4. I am familiar with the location in the JAR of where the alleged incident involving Plaintiff Raymond Williams occurred on November 16, 2015, the seating of the first row of the Upper West Bank which for basketball season is designated as reserved seating (Section 1 A, Row A, Seat 6). This area includes individual seats with seat backs, bottoms and armrests.

¹ While the inspection covered all the athletic venues, only the portion pertaining to the JAR Arena are attached. Should the Court require to review the entire report, the University will provide a copy upon request.

5. The June 11, 2015 report prepared by H&H Enterprises did not identify any issues or concerns with respect to any of the seats in this area, including the one in which Mr. Williams was seated on November 16, 2015. In addition, I reviewed the past several previous safety inspection reports of the JAR dating back to 2010 and none of those reports indicated there were any safety issues or mechanical deficiencies with the seats in this area, including the one in which Mr. Williams was seated on November 16, 2015.

FURTHER AFFIANT SAYETH NAUGHT.



David E. Tiller

Sworn to before me and signed in my presence this 17th day of May, 2016.



NOTARY PUBLIC

My commission expires on 12/12/2016



Sharon Ann Messner
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 12/12/2016

BLEACHER INSPECTION
REPORT/ANALYSIS

James A. Rhoades Arena

CONDUCTED BY:
H & H Enterprises, Inc.
Grand Haven, Michigan



H & H ENTERPRISES
THE BLEACHER PEOPLE

BLEACHER INSPECTION / ANALYSIS

University Of Akron
James A. Rhoades Arena
Akron, Ohio

DATE OF INSPECTION: 06/11/15

LAST INSPECTION: 11/04/13

Next professional inspection due: 06/16 or sooner: (ICC Standards (501.1-501.2) require that a qualified person shall inspect and evaluate all tiered seating annually, in order to verify that the structure is maintained in compliance with the provisions of this standard. All folding and telescopic seating shall be annually inspected to evaluate compliance with the manufactures installation and operational instructions, including an inspection during open and closing of such seating. This document should be retained as part of your permanent bleacher records).

INSPECTED BY: Dan Downey

ANALYST: Dan DeVries

BLEACHER DATA

The four banks on the main floor and one bank in the balcony are full powered operated, telescoping type seating, featuring folding platform seats, manufactured by Hussey Seating of North Berwyk, Maine, (ref. photos 1-4). The other three banks in the balcony are full powered telescoping type bleachers manufactured by Hussey Seating of North Berwick, Maine (ref. photos 5-6). Based on normal allowances, these units combined provide seating for approximately 7,827 spectators, and have an estimated replacement value of \$785,000.

REPORT OF CONDITION

SUPERSTRUCTURE: *Including footboards, skirts, aisleways, safety rails, hinges, and security locks, as applicable.*

Platform Seats: This type of structure is equipped with platform seating. All seats were checked and some are currently damaged or missing (ref. photos 7-11). The remainder of the seats appeared to be in generally good condition, with the exception of a few seat return springs no longer functioning properly.



Boards: All seat, deck and skirt boards were checked for cracks, breaks, or other damage. Several boards were identified as needing replacement (ref. photos 12-22). Damaged boards represent a serious safety hazard and could cause tripping, pinching, and sliver accidents as well as weaken the structural integrity of the installation.



Fasteners: Several of the attachment bolts and fasteners, were noted to be loose or missing, which is a common and ongoing problem with telescopic seating (ref. photos 23-26). They should be checked periodically as part of your regular maintenance program.



Security Locks: First row security locks were designed and equipped for this type of bleacher and should be used. All security locks were thoroughly checked and eleven (11) appeared to be loose or damaged and shall require prompt repair or replacement. Because of the relatively complex mechanical system of these bleachers it is essential they be operated under controlled supervision.



Hinges: After carefully checking of all first row skirt board hardware, several hinges appeared to be loose, disconnected or damaged and should be repaired or replaced (ref. photos 27-29). These hinges are important as they attach the skirt board to the first row, which allows it to pivot upward for cleaning purposes and to access the front of the power drive system.



Chest Handle: All chest handles and related tabs were checked and appeared to be in adequate condition (ref. photo 30). The chest handle and tab hold the first row skirt in the up position allowing access to the power system.

Aisle Steps & Center Aisle Rails: The platform style bleachers in the balcony were designed with foot-level aisles to provide easier travel for spectators moving up and down the bleachers. These bleachers have been equipped with an intermediate aisle filler step in the designated walkways to ease access to and from the seats. All of these sheet metal and wood filler steps and the treads attached to them were checked and a significant number of them are loose and should be secured. Loose intermediate steps can be unstable when stepped on and present a potentially serious safety hazard. To further facilitate the safe usage of this designated aisle, these bleachers have been equipped with center aisle handrails, which mount manually into center aisle handrail receiver brackets installed in the intermediate steps (ref. photos 31-38). Caution: care should be taken to remember to remove these center aisle rails before the bleachers are closed. Failing to do so may cause significant damage to the rails or other system components.



Aisle Enclosures: The three standard telescoping banks of bleachers are designed with foot-level aisles to provide safe travel for spectators moving up and down the bleachers. To enclose the aisle cutouts when the bleachers are stacked in the closed position, wood panels have been installed, to eliminate the ladder effect (ref. photos 39-40).



Aisle: The four banks of platform style bleachers on the main floor are designed with standard foot-level aisles. These aisles were checked and appeared to be in adequate condition.

Self-Storing Safety End Rails: The two larger banks on the main floor are equipped with self-storing end rails. All of the rails were carefully checked and all appeared to be in good condition at the time of the inspection (ref. photos 41-42). However, they do not comply with the current ICC codes with regards to allowable gaps between mid-rails. Consideration should be given to upgrading these rails to a current code compliant self-storing end rail. A quotation for upgraded rails can be provided by H&H Enterprises upon request. Although these rails require no set-up, they must still be checked and maintained like any other rail. To insure the rails remain secure, they should be checked periodically throughout the year and tightened as necessary.

Safety End Rails: The two smaller main floor banks are equipped with drop-in safety rails. All of the safety rails were thoroughly checked and all appeared to be in good condition at the time of the inspection. Safety rails are required to be securely in place each time these seating units are being used. Due to the tapered design of these units, self-storing end rails are not an option.

UNDERSTRUCTURE: *Including floor brackets, main support frames, support wheel and slide mechanisms, safety row locks, springs, latches, cables, and power units, as applicable.*

Wall/Floor Attachments: Several wall anchors were found to be loose and should be secured (ref. photos 43-46). This is a significant safety problem that will worsen rapidly as added stress is placed on the remaining anchors. These anchors are a vital component in the bleacher system and should be checked periodically by your maintenance staff.

Compression: Design clearances were checked throughout the sections. The term used to describe the lack of clearances between rows is compression, and it is the sagging or compressing down of rows on top of each other, eliminating necessary design clearances between adjacent rows. In some cases, where severe compression exists, metal-to-metal contact can be found. This causes some dragging and binding when operating the bleachers. Advanced compression requires the use of excessive force to overcome the binding that occurs and over time, will tax the power system and cause premature wear on its components. Compression can develop over time due to fatigue in the metal deck board supports. When the bleachers are in the closed position or if they are partially opened, there is no support under the front of the rows and they are quickly bent or compressed down on top of each other if climbed on. It is possible that some people have been climbing or sitting on the unopened and unsupported rows, which is a serious abuse of the equipment. This is very likely on the two smaller banks on the main floor due to their short height.



Guide Clips: All upper guide clips were carefully checked and all were found to be in good condition at the time of the inspection (ref. photo 47). The guide clips, also referred to as "C" clips, are mounted on top of the main support horses and keep the moving foot board supports centered over the horse for maximum stability.



Upper Row Stops: The upper row stops were checked throughout the understructure and all were present and in fair condition, however the bolt and nut design is prone to loosening with continued use and should be checked regularly as a part of your ongoing, in-house maintenance program (ref. photo 48). The upper row stops contact the guide clips to stop the row in the properly extended position.

Support Guide Rollers: This style of seating is equipped with support rollers located on the deck supports of each row. The rollers serve as a glide point for rows when they are moving in and out. These rollers also help to keep the deck supports aligned over the support horses. All the support guide rollers were carefully checked and several are missing or damaged and should be replaced (ref. photo 49).



Row Locks: The safety row interlock system was thoroughly checked. The row locks are essential elements of the operating system and serve the important function of interlocking the rows to provide needed stability when the units are open. When closing the units, the row locks sequence the release of the rows to prevent twisting or binding. A few row locks are damaged or missing and should be repaired or replaced (ref. photos 50-52). The moving rows are not stable without these latches, as the rows can shift if not fully locked-out.



Row Lock Tabs: Row lock tabs are important components in the interlock system as they engage with the row lock to lock it out in the proper position. If the tab is missing the row will not lock out. If the tab is bent, the row lock may not engage. A few row lock tabs are missing and should be replaced.

Auto Stop Bars: All auto stop bars were carefully checked and all were found to be in good condition at the time of the inspection. These components are related to the row locks mentioned above. The auto-stop bars attach the row locks to the truck assemblies and serve as an adjustment to properly align the row lock for engagement with the row stop.

Wheel Channel Interconnects: The wheel channel interconnects attach the truck assemblies of each bleacher row to its adjacent counterpart, keeping each row linked with the next. Besides allowing the rows to track in and out properly, the connected wheel channels lend stability to the structures by keeping the supports and truck assemblies tied together. The wheel channel interconnects serve multiple functions. These components not only connect the wheel channels, but they also serve as lower row stops.

Power System (all except smaller banks on main floor): The power drive system was carefully examined and appeared in generally good condition (ref. photos 53-54). It was noted, however, the drive rollers are in need of cleaning to keep them free of dust and dirt build-up. For a friction drive system such as yours to work efficiently, the drive rollers must securely grip the floor. Dirt can cause reduced traction, and subsequently a loss in power. The drive rollers should be cleaned and wiped down several times a year to maintain peak performance.



Power System (two smaller banks on main floor): The power drive system on the two smaller banks of bleachers on the main floor is an older system and was also carefully examined. This power system has a series of rubber pads, which are what contact the floor. These pads are in need of cleaning to keep them free of dust and dirt build-up (ref. photos 55-58). Due to the aforementioned compression, the power system is being forced to work much harder than is necessary and is presently having difficulty extending and retracting the bleachers. The bleacher condition causes these pads to wear-out prematurely. For a friction drive system such as yours to work efficiently, the drive pads must securely grip the floor. The other banks of bleachers have drive rollers vs. pads and are the newer design. Components for the current drive system on these smaller sets of bleachers are no longer available. Serious consideration should be given to replacing this system with a new friction drive power system. *A quotation to furnish and install a new power system on these bleachers can be provided upon request.*



Power Cords: At the time of inspection, there were power cords dragging on the floor underneath these units (ref. photos 59-62). Every effort should be made to have these cords insulated, and properly secured by an individual with electrical expertise. These cords could entangle themselves in the understructure and damage your installation. Furthermore, if either of the cords has exposed wires an electrical hazard could result.



Section Connectors: With power operation, each of the individual sections is tied together with metal connectors (ref. photo 63). This allows the entire side to move as one continuous bank. Each connector was carefully checked and all were found to be in good condition at the time of the inspection. It is important these connectors are checked and remain secure. If the connectors are loose or missing, the sections can twist when operated, and serious understructure damage can occur.

Wheels: All support wheels were carefully checked and some are damaged or missing and should be replaced (ref. photo 64). Each wheel is important for proper weight distribution and to insure smooth operation without marring the floor surface.

Seat Supports: Some seat board supports are bent, causing the seat boards to sag and creating an uneven surface. This problem is the result of hard use over the years, coupled with a make of bleacher susceptible to seat support fatigue and damage. Bent seat supports are also a comfort and safety concern as the bent seats are more difficult to sit or step on. An auxiliary support should be added in the fatigued areas to help reinforce the seat supports and eliminated the sagging that is currently present.



Debris: The understructure of the upper bleachers was filled with debris and garbage at the time of inspection (ref. photos 65-67). When debris is present, it can interfere with proper operation of the bleachers and related power units. Excessive debris will lead to premature understructure component damage. Support wheels, wheel channels and power system drive rollers will under-perform due to the debris build-up. We highly recommend a regular regimen of housekeeping and debris removal be put in place.

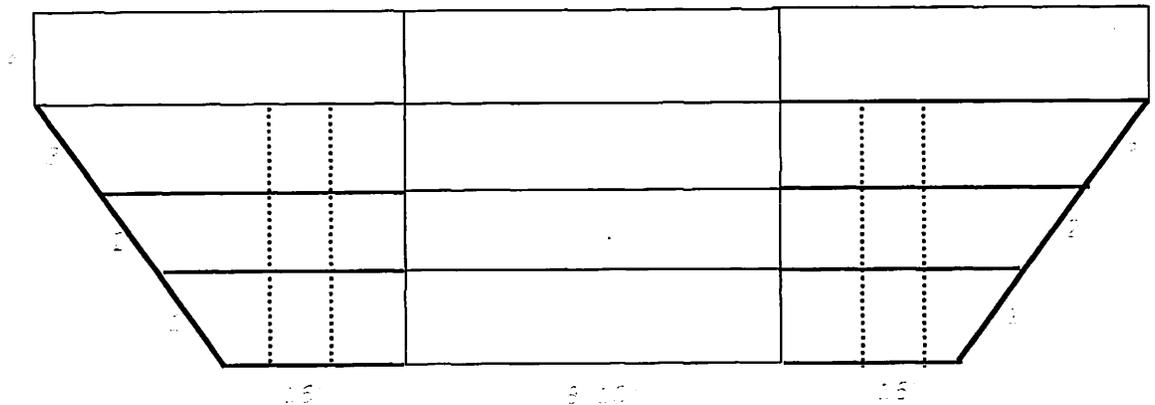


Lubrication: And finally, all sections are in need of basic lubrication and adjustment to improve operation and extend the life of the system.



University of Akron
James A. Rhoades Arena
Hussey Platform Bleachers ~ 3 Sections, 4 Rows High
North Lower Bank

June 11, 2015





June 11, 2015

University of Akron - James A. Rhoades Arena
 Hussey Motorized Bleachers ~ 5 Sections, 21 Rows High
North Upper Bank

MRL					
			SB		
MRL					
SB					
		SSB	SSB		
	MRL				
SB					K
				AF	
SB					
RL					
RS		AF			
		SL	SL		

MRL = Missing Row Lock
SB = Seat Board
AF = Aisle Filler

SL = Security Lock
K = Kick Board
SSB = Seat Support Bracket

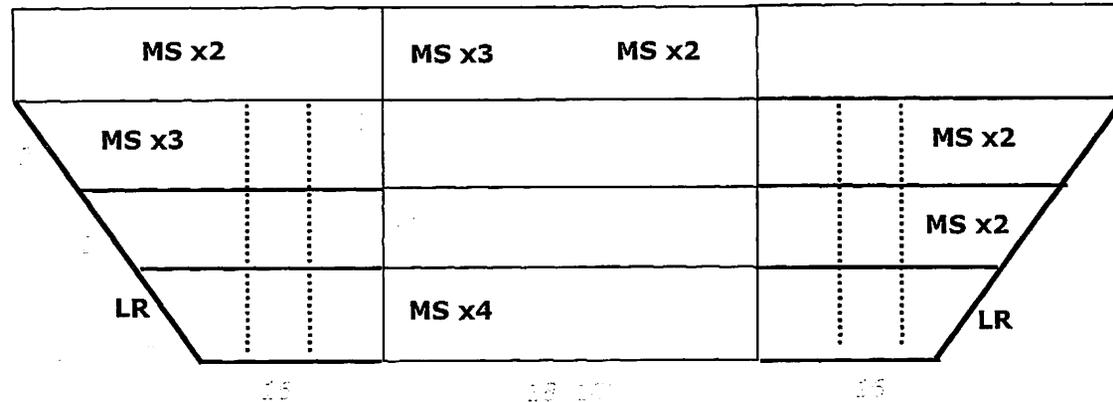
RL = Row Lock
RS = Row Stop



June 11, 2015

University of Akron James A. Rhoades Arena

Hussey Platform Motorized Bleachers ~ 5 Sections, 21 Rows High
South Lower Bank

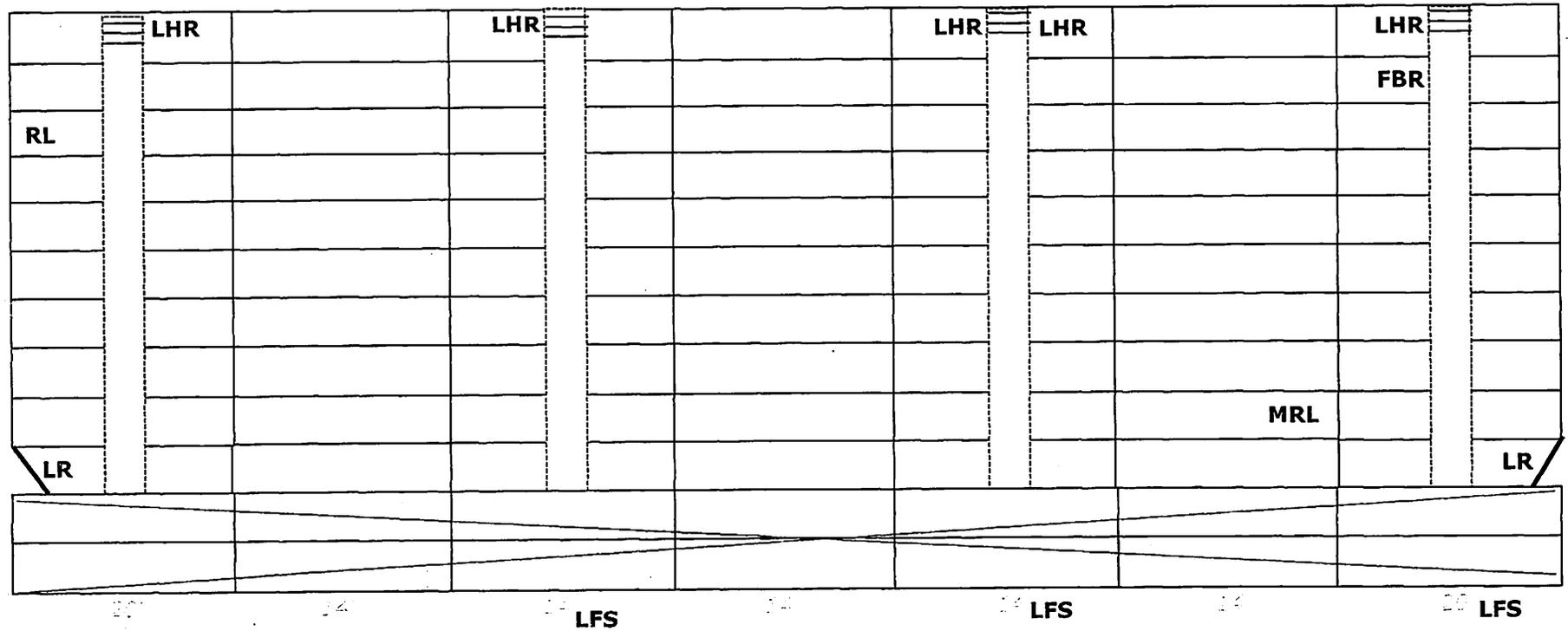


LR = Loose Rail
MS = Missing Seat



June 11, 2015

University of Akron - James A Rhoades Arena
 Hussey Platform Motorized Bleachers
East Lower Bank

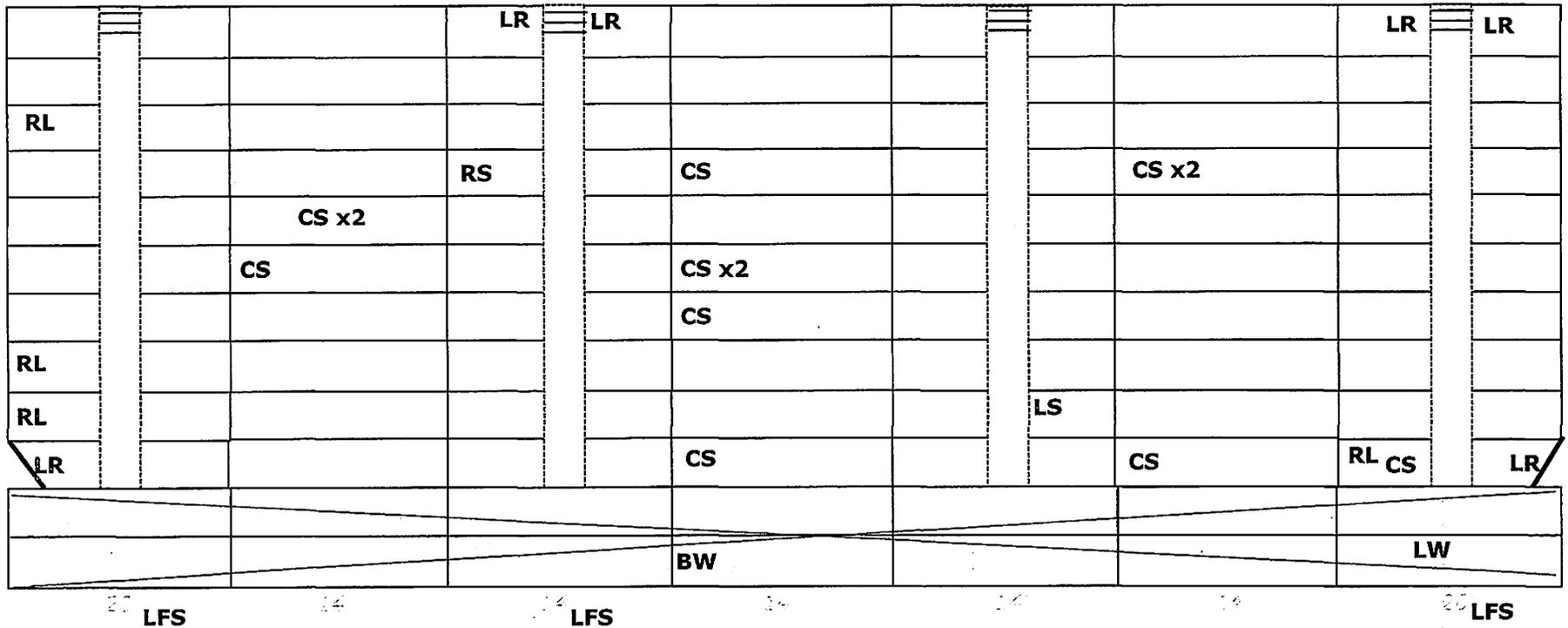


- RL** = Row Lock
- LR** = Loose Rail
- LHR** = Loose Hand Rail
- LFS** = Loose Floor Step
- FBR** = Foot Board Reinforcement
- MRL** = Missing Row Lock



June 11, 2015

University of Akron - James A Rhoades Arena
 Hussey Platform Motorized Bleachers
West Lower Bank



- LFS** = Loose Floor Step
- CS** = Cracked Seat
- RS** = Row Stop
- BW** = Bent Wheel
- LR** = Loose Rail
- LW** = Loose Wires
- RL** = Row Lock

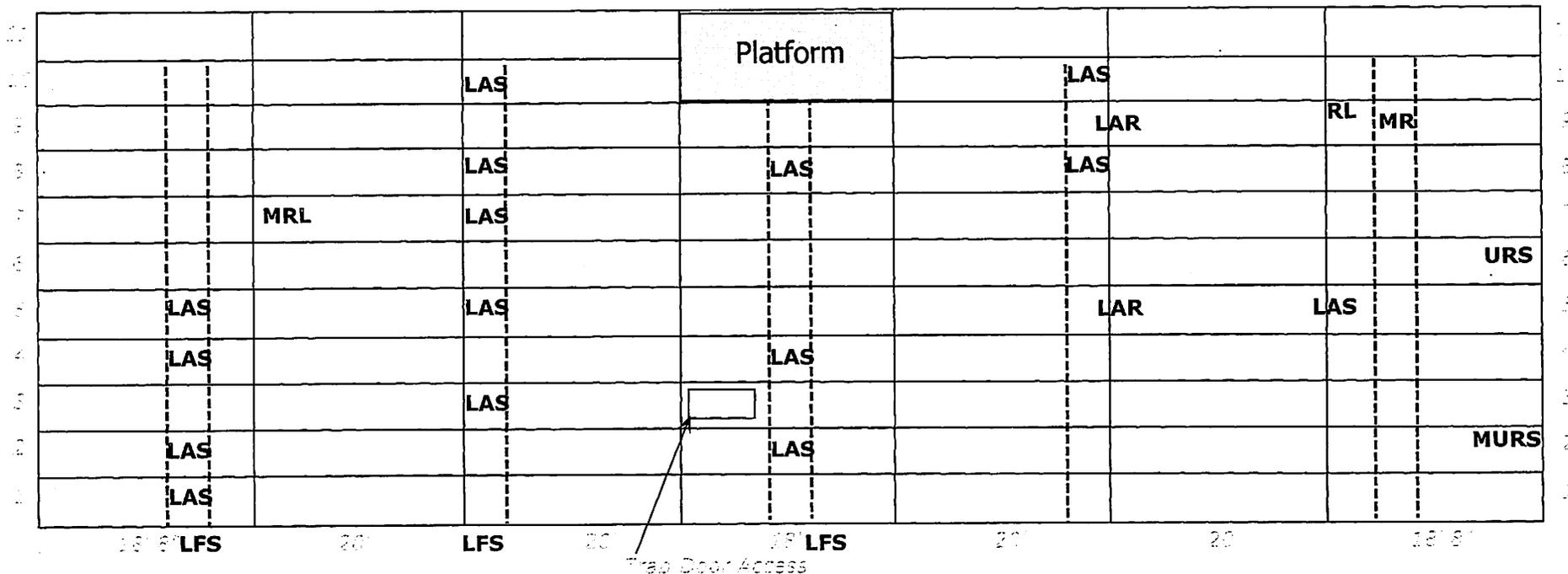


Drawing not to Scale



June 11, 2015

University of Akron
 James A. Rhoades Arena
 Hussey Platform Bleachers ~ 7 Sections, 11 Rows High
West Upper Bank



MRL = Missing Row Lock
LAS = Loose Aisle Step
LFS = Loose Floor Step

LAR = Loose Aisle Rail
RL = Row Lock
MR = Missing Rail

MURS = Missing Upper Row Stop
URS = Upper Row Stop



QUOTATION

October 3, 2015
Page 1 of 2

Mr. Dave Tiller
University of Akron
185 East Mill Street
Akron, OH 44325

Superstructure: James A. Rhoades Arena

Quantity	Description
	<u>Seat Boards</u>
4	3/4 x 9 x 18' 8"
2	3/4 x 9 x 20'
1	3/4 x 9 x 18'
4	3/4 x 9 x 12' 11"
1	3/4 x 9 x 11' 11"
3	3/4 x 8 3/4 x 16'
	<u>Skirt and Aisle Enclosure Boards</u>
1	3/4 x 10 x 20'
1	3/4 x 10 x 17' 4"
2	3/4 x 9 x 4' 1"

Boards to be Southern Yellow Pine Industry Standard, manufactured specifically for gymnasium bleachers. Boards are unfinished and undrilled.

19	Replacement Boards	\$ 2,611.00
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Prefinish:

Stained to harmonize with existing boards, finished with three coats of our specially formulated, environmentally friendly polyurethane.

	Price	\$ 292.00
--	-------	-----------

Installation:

Remove old boards, drill and install new boards.

	Price	\$ 1,170.00
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Superstructure Total		\$ 4,073.00
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Understructure:

- ◆ Secure wall and floor anchor attachments.
- ◆ Secure safety rails and related attachment hardware.
- ◆ Adjust row locks for proper actuation.
- ◆ Replace damaged/missing row locks where indicated.
- ◆ Replace missing row lock tabs where indicated.
- ◆ Replace missing upper support rollers where indicated.
- ◆ Replace damaged/missing support wheels where indicated.
- ◆ Install auxiliary seat supports where indicated.
- ◆ Adjust first row skirt hinges for proper operation.
- ◆ Repair or replace broken and loose first-row skirt board hinges where indicated.
- ◆ Adjust micro limit switches for proper function.
- ◆ Secure intermediate aisle steps as needed ***Critical Issue-Many are Dangerously Loose*-**
- ◆ Secure loose power cords under bleachers as needed.
- ◆ Solvent-clean friction drive rollers to maintain required traction.
- ◆ Replace missing bolts and nuts throughout.
- ◆ Perform general lubrication and adjustment.

Understructure Total \$ 18,737.00

Important Note: *The service project as quoted does not include repair of the existing power system. Damage to components such as: track links, hinges, drive wheels, drums, drive rollers or any electrical components are excluded from this proposal.*

School Total \$ 22,810.00

Cost Analysis: *A repair total of \$23,877 represents a \$3.81 per seat cost, as compared to \$85 per seat for new replacement bleachers. The cost of repairing the existing bleachers is 4.4% of the cost to replace with new bleachers.*

Note: *This quotation is based on work being performed with similar work at University of Akron. Additional charges will apply if purchased as a stand-alone project.*

The General Conditions enclosed are a part of this quotation.

By: _____ Accepted: _____

Dan DeVries

Date: 10/3/15 P.O. # _____ Date: _____

PLATFORM SEATS

REFERENCE PHOTOS 7 -11

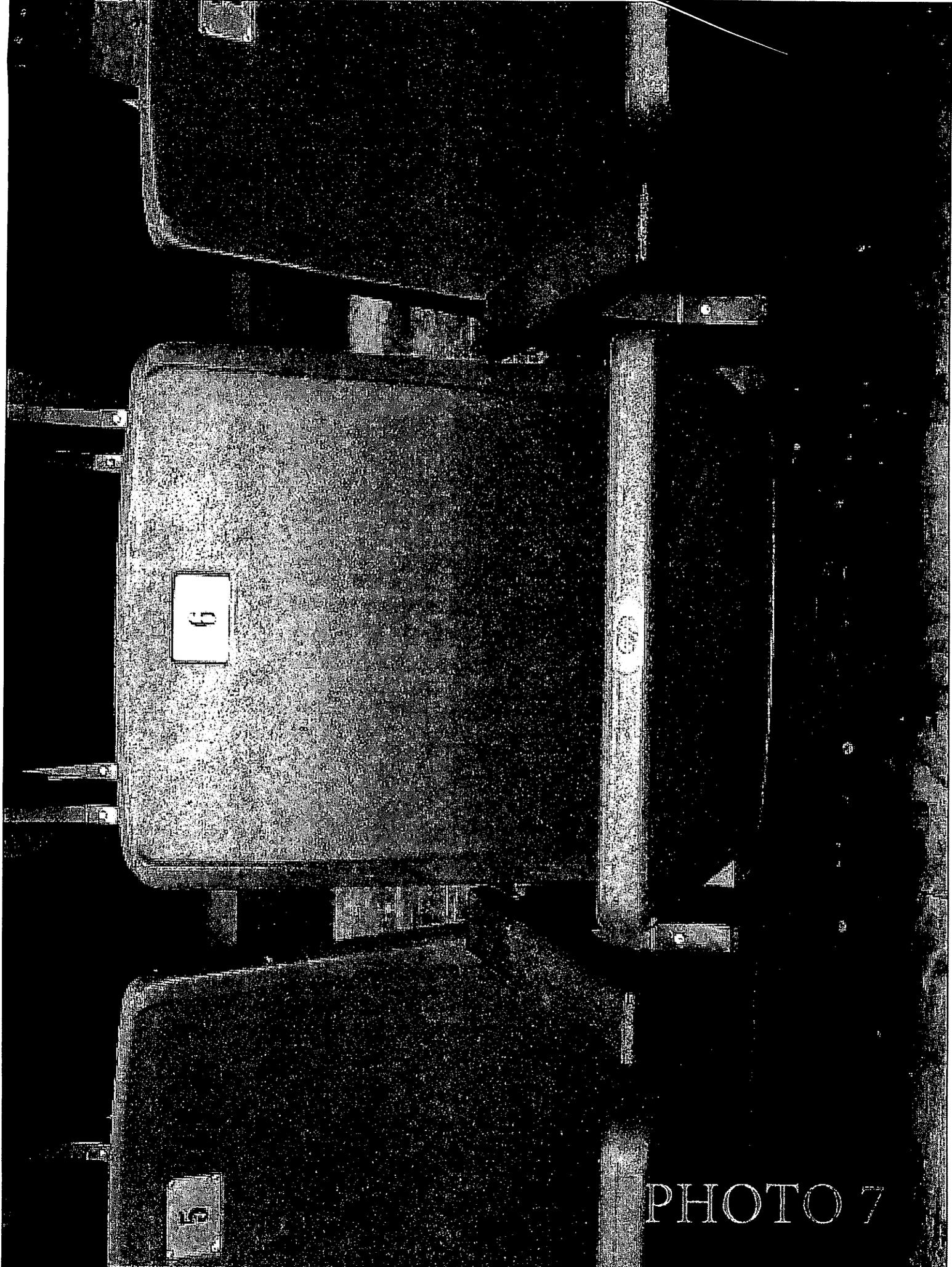


PHOTO 7



PHOTO 8

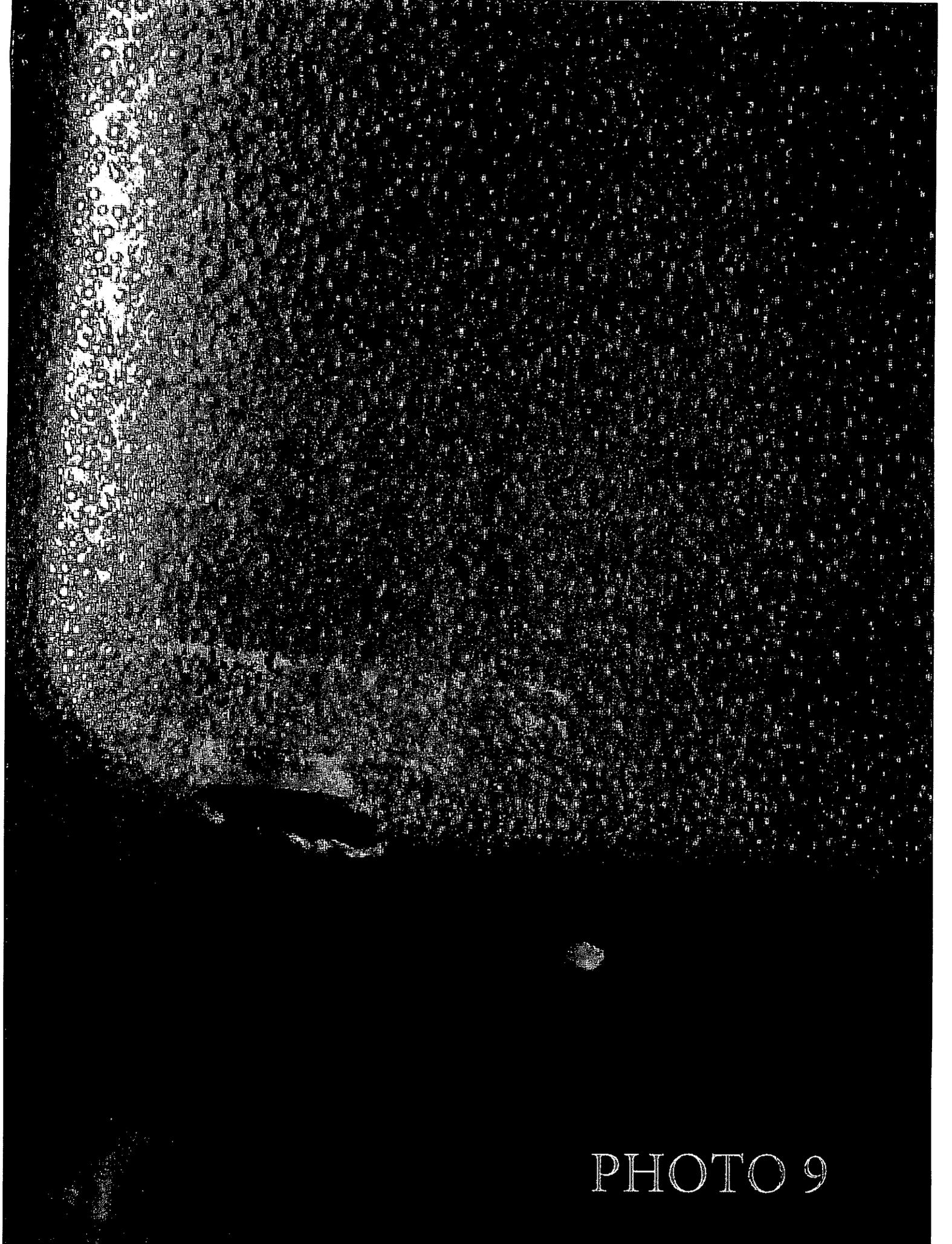


PHOTO 9

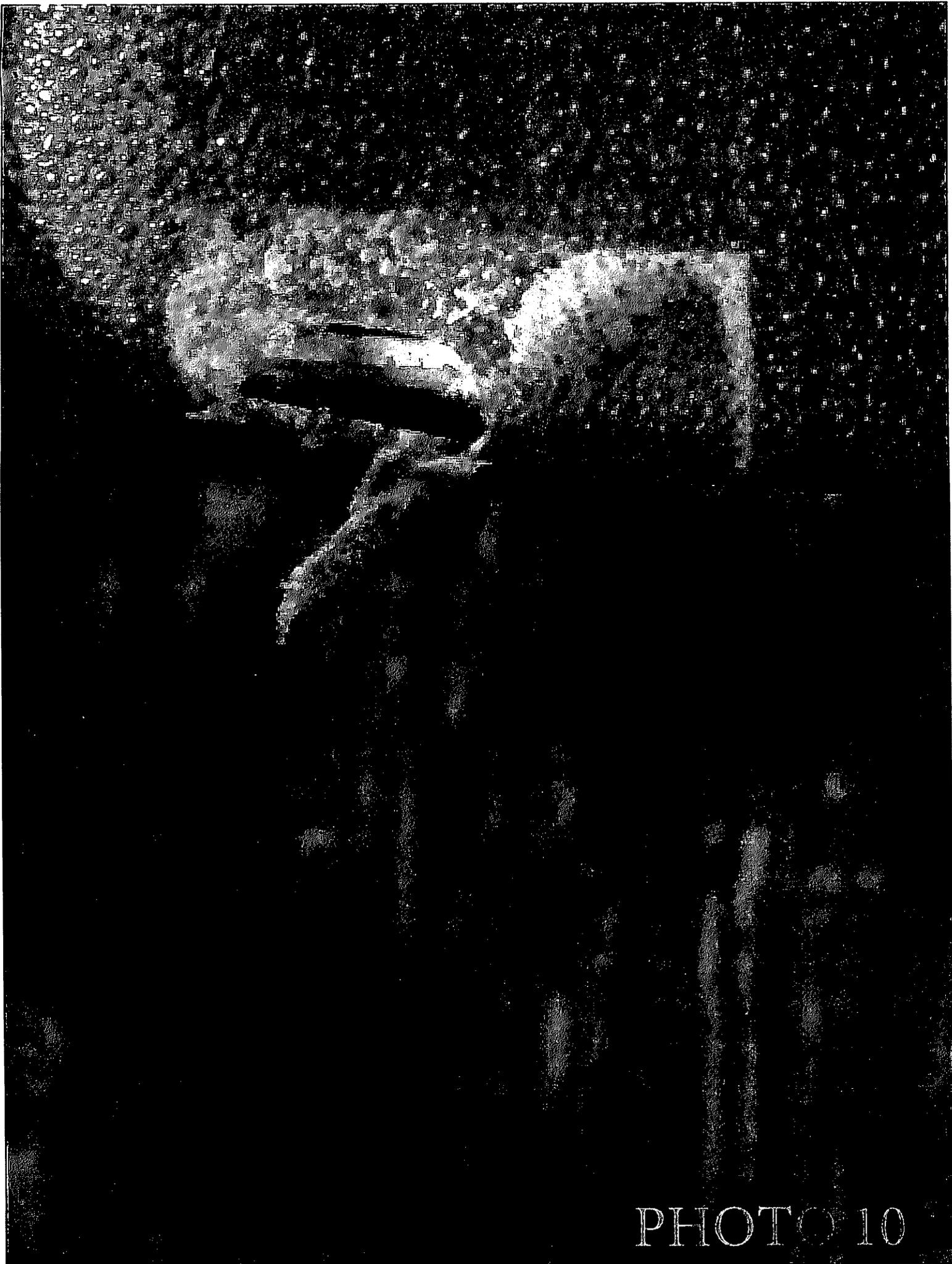
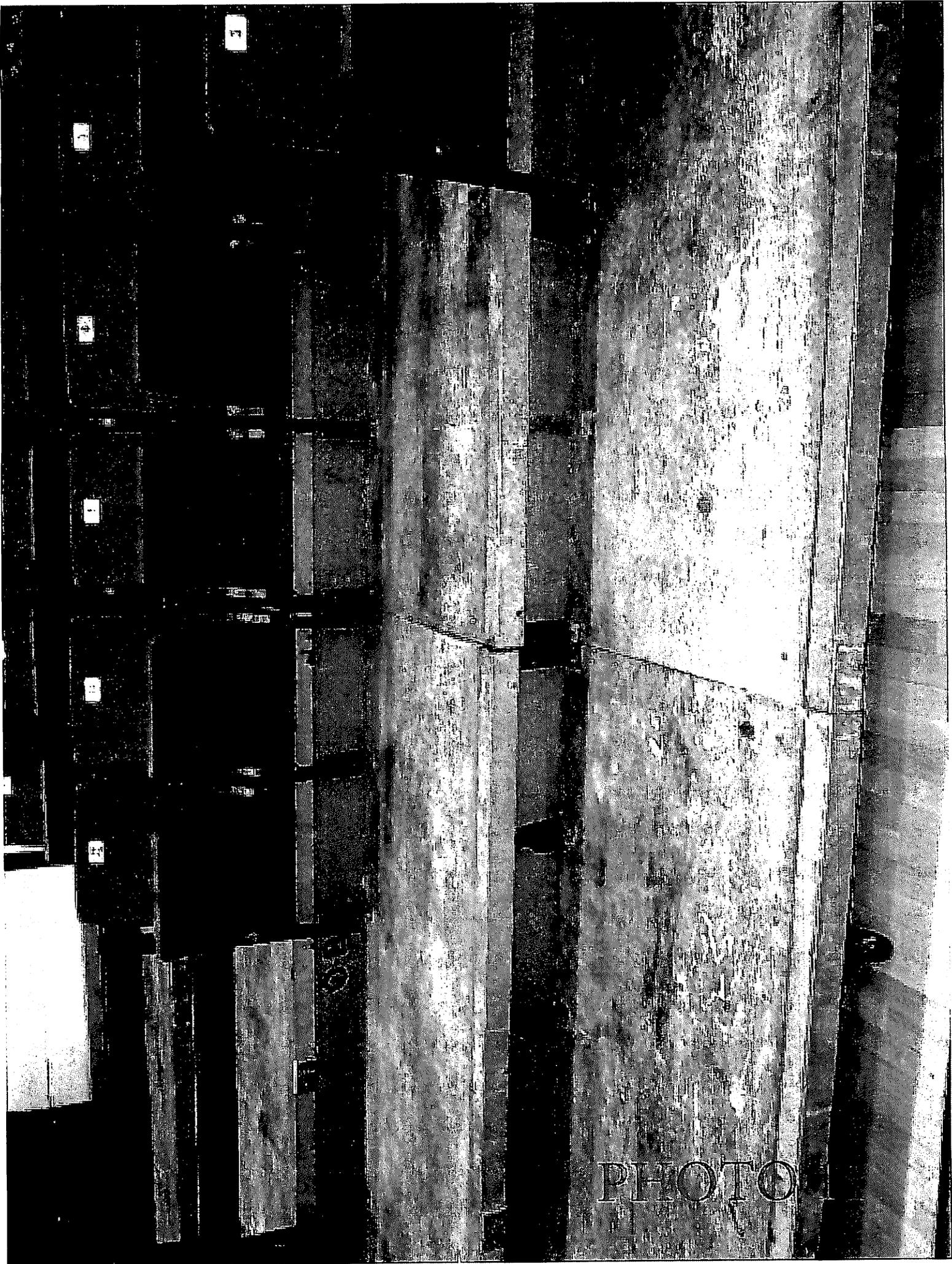


PHOTO 10



PHOTO

IN THE COURT OF CLAIMS OF OHIO

RAYMOND WILLIAMS)	
)	
Plaintiff	)	CASE NO. 2016-00199-AD
)	
vs.)	
)	
THE UNIVERSITY OF AKRON	)	<u>AFFIDAVIT OF PAUL HAMMOND</u>
)	
Defendant.)	
)	
STATE OF OHIO)	
	)	ss:
COUNTY OF SUMMIT)	

Paul Hammond, being first duly sworn, deposes and states as follows:

1. My name is Paul Hammond. I am currently employed by The University of Akron (University) as the Associate Director of Athletics for Facilities and Operations and have held that position since 2007. Prior to that, I held the position of Assistant Director of Athletics at the University since June 18, 2002.

2. Part of my duties and responsibilities as the Associate Director of Athletics is to oversee all game management of the University's sports teams, including events held in the James A. Rhoades (JAR) Arena, which was constructed in 1982. This includes oversight of managing the personnel and preparing the venue to coordinate logistics and production for Men's Basketball games.

3. Prior to each basketball game the seating in the JAR Arena is inspected visually by all staff, including game managers, ushers, maintenance staff and myself. Repairs and adjustments are conducted as necessary. From time to time, our fans attending games have also assisted in voicing or writing about issues with their seating; once our staff is made aware, the issue is addressed and corrected.

4. In addition, the JAR Arena seating is inspected on a regular basis by an external company. This process is managed by the University's Safety Office. The University's Athletic Department is made aware by the Safety Office of any mechanical or safety issues which this external company may identify during its inspection and those issues are reported to our Physical Facilities Department addressed and repaired, as necessary.

5. These collective efforts are to help ensure that the seating in the JAR is well maintained and as safe as possible to avoid injuries.

6. I am aware of the location of the incident which occurred on November 16, 2015 involving Raymond Williams, Reserved Section 1 A, Row A, Seat 6. At no time prior to November 16, 2015 was I aware of any mechanical or safety issue pertaining to this seat.

FURTHER AFFIANT SAYETH NAUGHT.



Paul Hammond

Sworn to before me and signed in my presence this 10th day of May, 2016.



NOTARY PUBLIC



Sharon Ann Messner
Resident Summit County
Notary Public, State of Ohio
My Commission Expires: 12/12/2016

My commission expires on 12/12/2016.