

UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

JOSE T. HIDALGA, d/b/a
LIBERTY CHARTERS & TOURS
1650 Sunbend Road
San Antonio, TX 78224

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Order OOSO-2008-03
Service Date: 8/12/08
Time: 5:09 pm Central
Person Served: DeSerae Hidalgo

OPERATIONS OUT-OF-SERVICE ORDER

This notice constitutes an **Operations Out-of-Service Order** by the United States Department of Transportation ("DOT") pursuant to 49 U.S.C. § 521(b)(5)(A), Public Law 105-59, § 4114, 119 Stat. 1144, 1725-1726 (Aug. 10, 2005), and 49 C.F.R. § 386.72(b)(1), and pursuant to delegation of authority to the Field Administrator, Federal Motor Carrier Safety Administration ("FMCSA"), United States Department of Transportation, Atlanta, Georgia. The Order applies to Jose T. Hidalgo d/b/a Liberty Charters & Tours and each of its officers and directors, including but not limited to Jose T. Hidalgo (referred to collectively herein as "you," "your" or "Liberty Charters.")

The United States finds your motor coach operations affiliated with Angel Tours, Inc. ("Angel Tours"), Iguala Busmex, Inc. ("Iguala Busmex") and/or Angel De La Torre ("De La Torre") constitute an **"imminent hazard."** This finding means that based upon the present state of unacceptable safety compliance of Angel Tours, Iguala Busmex and De La Torre, particularly in the area of vehicle maintenance, your continued motor carrier operations affiliated with Angel Tours, Iguala Busmex and/or De la Torre pose an imminent hazard to public safety.

EFFECTIVE IMMEDIATELY, YOU MUST CEASE ALL MOTOR VEHICLE OPERATIONS AFFILIATED WITH ANGEL TOURS, INC., IGUALA BUSMEX, INC. AND/OR ANGEL DE LA TORRE.

Operations affiliated with Angel Tours, Iguala Busmex and/or De La Torre include any and all transportation (1) using a commercial motor vehicle owned by or leased from Angel Tours, Iguala Busmex and/or De la Torre, or (2) performed by drivers who have (a) driven a commercial motor vehicle owned, arranged for or dispatched by Angel Tours, Iguala Busmex or Angel De La Torre, (b) received compensation for driving from Angel Tours, Iguala Busmex or Angel de La Torre, or (c) have submitted records of duty status, expense records and receipts, or other payroll documentation to Angel Tours, Iguala or Angel De La Torre since June 23, 2008, the effective date of the Operations Out-of-Service Order issued against Angel Tours, without independently ensuring the qualification of and maintaining a complete driver qualification file for each driver.

NO ADDITIONAL PASSENGERS MAY BE LOADED OR TRANSPORTED, NOR MAY THE BUSES BE OPERATED IN INTERSTATE OR INTRASTATE COMMERCE DURING THE PERIOD OF TIME THIS ORDER IS IN EFFECT. A BUS MAY BE MOVED TO A LOCATION TO BE REPAIRED ONLY UPON APPROVAL FROM THE FIELD ADMINISTRATOR.

JURISDICTION

Liberty Charters is a motor carrier engaged in interstate commerce and is therefore subject to the Federal Motor Carrier Safety Regulations ("FMCSRs"), 49 C.F.R. Parts 350-399, as well as the Orders of the DOT and FMCSA. (See 49 U.S.C. §§ 506, 507, 13501 and 31133.)

Liberty Charters is required to comply, and to ensure its drivers comply, with the FMCSRs (49 C.F.R. § 390.11). This Order shall have the force and effect of any other Order issued by the FMCSA and shall be binding upon Liberty Charters, as well as any and all of its officers, directors, successors and assigns.

BASIS FOR THE OUT-OF-SERVICE ORDER

The basis for determining that Liberty Charters' motor carrier operations affiliated with Angel Tours, Iguala Busmex and/or De La Torre pose an imminent hazard to the public is that Angel Tours and Iguala Busmex currently operate vehicles in a mechanically unsafe operating condition which, if operated, would pose an imminent hazard to the public. Angel Tours and Iguala Busmex fail to ensure their vehicles are properly and regularly inspected, repaired and maintained. Angel Tours and Iguala Busmex fail to ensure they are complying with the Federal controlled substances and alcohol use and testing requirements, qualification of drivers requirements and drivers' hours of service requirements. Both Angel Tours and Iguala Busmex are motor carriers substantially controlled by Angel De La Torre. Individually and cumulatively, these violations and conditions of operation substantially increase the likelihood of serious injury or death to the motoring public. Liberty Charters' continued affiliation with the motor carrier operations of Angel Tours, Iguala Busmex and/or De La Torre, poses a continuing imminent hazard to the public.

BACKGROUND

On August 8, 2008, a bus operated by Angel Tours and/or Iguala, Inc. transporting passengers from Houston, Texas to Carthage, Missouri crashed on Highway 75 traveling northbound near Sherman, Texas. The initial investigation of the Sherman, Texas Police

Department determined a contributing factor to the crash was that the right front tire blew out, causing the driver to lose control of the bus. The initial investigation also revealed that the blown tire was "recapped." A recapped tire is used tire that has new tread installed. Recapped tires are not allowed on the steering axles of buses. The bus hit a guard rail, ran off a bridge and struck an embankment. There are currently 17 fatalities and more than 40 injuries. A number of the injuries are critical. The National Transportation Safety Board ("NTSB") is investigating the incident.

As a result of this multi-fatality accident, FMCSA initiated an accident investigation on August 8, 2008. The initial investigation revealed that Angel Tours was the subject of a Compliance Review (CR) initiated on May 1, 2008. The result of the CR was a proposed safety fitness rating of "Unsatisfactory," finding that Angel Tours has a grossly ineffective or nonexistent inspection, repair and maintenance program. The CR also uncovered violations of other FMCSRs so widespread as to demonstrate a continuing and flagrant general disregard for compliance with the FMCSRs and a management philosophy indifferent to motor carrier safety. Moreover, the CR identified a total and complete breakdown of management controls and oversight to ensure safe operation of the company's commercial motor vehicles. On June 12, 2008, Angel Tours was served an Operations Out-of-Service Order. The Operations Out-of-Service Order became effective on June 23, 2008, and remains in effect. On June 24, 2008, Angel Tours requested an upgrade of its safety rating based upon corrective action. After a review of the corrective action submitted, the request for an upgrade was denied because Angel Tours failed to submit evidence that demonstrated correction of the violations leading to the unsatisfactory safety rating.

Iguala Busmex, Inc. constitutes a mere continuity of Angel Tours' operations. On or about June 27, 2008, immediately following the issuance of the Unsatisfactory safety fitness determination against Angel Tours, Iguala Busmex registered with FMCSA, and Angel Tours began to operate under the name of Iguala Busmex, Inc. A review of the motor carrier operations of Angel Tours and Iguala demonstrates that both are motor carriers transporting passengers with identical routes and the same customer base. Angel Tours and Iguala utilize the same equipment and same drivers. Angel Tours and Iguala operate from the same physical location and motor carrier operations and both are controlled by Angel De La Torre. A review of the operations of Angel Tours and Iguala demonstrate that Iguala is the continued operation of Angel Tours. Angel Tours' continuity of operation through Iguala demonstrates a blatant disregard for FMCSA Orders, which was issued based upon the company's substandard safety record. The operations of Angel Tours and Iguala have now reached the point where they constitute an **imminent hazard** to the public.

On August 9, 2008, Angel Tours, Iguala Busmex and Angel De La Torre were served Operations Out-of-Service Orders declaring they posed an imminent hazard to public safety, and ordering them to cease all motor vehicle operations immediately. FMCSA determined Angel Tours and Iguala Busmex, under the control of Angel De La Torre, operated with manifest disregard for compliance with the FMCSRs or the safety of the public, including a grossly ineffective or nonexistent vehicle inspection, repair and maintenance program and a severely deficient driver qualification process. Liberty Charters leases and operates buses owned and maintained by Angel Tours, Angel De La Torre and/or Iguala Busmex. Liberty Charters' use of passenger vehicles which are subject to the egregiously deficient maintenance procedures of

Angel Tours and Iguala Busmex and Angel De La Torre places its drivers and the motoring public at continued and substantially increased risk of serious injury or death.

LIBERTY CHARTERS' USE OF VEHICLES MAINTAINED BY ANGEL TOURS AND IGUALA BUSMEX'S INEFFECTIVE INSPECTION, REPAIR AND MAINTENANCE PROGRAM POSES AN IMMINENT HAZARD TO THE PUBLIC

As of August 8, 2008, Angel Tours and Iguala Busmex have demonstrated an ongoing failure to ensure their vehicles are adequately maintained and in safe operating condition. The failure to address the safety management issues, particularly related to vehicle maintenance, was a contributing factor in a crash resulting in 17 fatalities, to date. The May 2008 CR and the investigation initiated following the August 8 multi-fatality crash documented severe lapses in the maintenance program of Angel Tours and Iguala Busmex. Continued use of the vehicles subject to the same ineffective maintenance program would severely endanger the public.

LIBERTY CHARTERS' USE OF DRIVERS QUALIFIED BY ANGEL TOURS AND IGUALA BUSMEX'S INEFFECTIVE DRIVER QUALIFICATION PROCEDURES POSES AN IMMINENT HAZARD TO THE PUBLIC

Liberty Charters utilizes drivers that are also employed by Angel Tours and Iguala Busmex. These drivers meet the definition of multi-employer drivers, as defined in 49 C.F.R. §390.5. A motor carrier employing a multi-employer driver is not required to fully qualify the driver. Instead, the first employing company is required to fully qualify the driver and maintain a qualification file on the employee. Angel Tours and Iguala Busmex have demonstrated ineffective and substandard practices in regard to their qualification of drivers. The May 2008 CR of Angel Tours found the following violations with regard to driver qualification:

- a) using a driver who has not completed and furnished an employment application;
- (b) failing to maintain a driver qualification file on each driver employed;

(c) failing to maintain a list or certificate relating to violations of motor vehicle laws and ordinances required by 49 C.F.R. § 391.27;

(d) failing to maintain a copy of the driver record(s) obtained in response to the inquiry or inquiries to each State driver record agency required by paragraph (a)(1) of this section that must be placed in the driver qualification file within 30 days of the date the driver's employment begins; and

(e) failing to investigate each driver's background.

The preliminary investigation of the multi-fatality crash occurring on August 8, 2008 indicates that the driver was not properly qualified by Angel Tours or Iguala Busmex. Thus, Liberty Charters' continued reliance on the driver qualification practices of Angel Tours, Iguala Busmex or Angel De La Torre to fully qualify drivers operating vehicles it dispatches places the public at risk for a continued and substantially increased risk of injury or death.

REMEDIAL ACTION

To eliminate this imminent hazard, and before Liberty Charters will be permitted to resume those operations which are placed out of service by this Order, it must demonstrate that motor carrier operations affiliated with Angel Tours and Iguala Busmex can be conducted in compliance with the FMCSRs.

YOU MUST COMPLY WITH THE PROVISIONS OF THIS ORDER

- 1. Liberty Charters must ensure and demonstrate that vehicles to be leased from Angel Tours and Iguala are in a safe operating condition, they are in full compliance with 49 C.F.R. Part 393 (Parts and Accessories Necessary for Safe Operations) and Part 396 (Vehicle Maintenance), and Liberty Charters has an adequate inspection and**

- maintenance program in place to ensure compliance with the FMCSRs.**
- 2. Liberty Charters must fully qualify any drivers it uses that have been used or employed by Angel Tours, Iguala Busmex and/or Angel De La Torre since June 23, 2008, in accordance with the provisions of 49 C.F.R. Part 391. Liberty Charters must ensure and demonstrate that a complete driver qualification file is maintained for each driver it uses that has been used or employed by Angel Tours, Iguala Busmex and/or Angel De La Torre since June 23, 2008,**

RESCISSION OF THIS ORDER

Before resuming motor carrier operations prohibited under this Order, Liberty Charters must comply with the provisions of this Order, eliminate the problems constituting the imminent hazard which your operations pose, and adequately demonstrate to the Southern Field Administrator, FMCSA, the actions taken to eliminate the safety problems noted herein. You cannot avoid this Operations Out-of-Service Order by continuing operations under the name of another person or company. Any lease of equipment and/or direct assignment of contracts or other arrangements require the written approval of the Southern Field Administrator. Any such action taken in anticipation of this Operations Out-of-Service Order must cease immediately. You must have the Order rescinded by the Southern Field Administrator before you may continue interstate or intrastate operations using any of the affiliated vehicles or drivers described in this Order. Prior to rescission of the Order, you will be required to:

- 1. IDENTIFY THE CAUSE FOR YOUR NONCOMPLIANCE.**
- 2. DEVELOP A DETAILED PLAN OF ACTION THAT ADDRESSES EACH AREA OF NON-COMPLIANCE, THE STEPS YOU INTEND TO**

**TAKE TO OVERCOME YOUR NON-COMPLIANCE AND A TIME
TABLE FOR THESE STEPS (THE SAFETY MANAGEMENT PLAN).**

**3. DEVELOP AND CERTIFY THE COMMITMENT OF LIBERTY
CHARTERS TO COMPLY WITH THE FMCSRS.**

**4. EXECUTE THE SAFETY MANAGEMENT PLAN AND PROVIDE
CERTIFICATION BY ALL OWNERS AND COMPANY OFFICIALS.**

Your request to rescind this Operations Out-of-Service Order must be directed to the Southern Field Administrator, FMCSA, with a copy to Joanne Cisneros, Texas Division Administrator, FMCSA, United States Department of Transportation, 903 San Jacinto Boulevard, Suite 101, Austin, Texas.

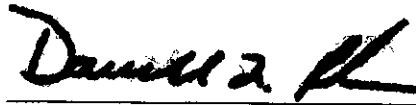
The request for rescission must be in written form, include the Safety Management Plan, and include certification by ALL corporate officers and managers of Liberty Charters that the provisions of the Order have been complied with, and that the imminently hazardous conditions have been eliminated.

FAILURE TO COMPLY

Failure to comply with the provisions of this Operations Out-of-Service Order may subject Liberty Charters to an action by the United States Attorney in the United States District Court for equitable relief and punitive damages. Liberty Charters may be assessed civil penalties of up to \$16,000 per day for each day you continue the proscribed interstate or intrastate operations after the effective date and time of this Order. (49 C.F.R. Part 386 App. A. § IV(b)). If violations are determined to be willful, criminal penalties may be imposed, including a fine of up to \$25,000 and a prison term of one year. (49 U.S.C. § 521(b)(6)(A)).

RIGHT TO REVIEW

You have the right to an administrative review pursuant to 49 C.F.R. § 386.72(b)(2), in accordance with 5 U.S.C. § 554. The administrative review, if requested, must be provided within 10 days of issuance of the Out-of-Service Order. The Request for Review must be addressed to the Assistant Administrator, FMCSA, 1200 New Jersey Avenue, SE, Washington DC 20590. The request must state the material facts at issue which you believe dispute or contradict the finding that Liberty Charters' operations affiliated with Angel Tours, Iguala Busmex, and/or De La Torre constitute an imminent hazard to the public. **A REQUEST FOR REVIEW DOES NOT IN ANY WAY DELAY YOUR DUTY TO COMPLY WITH THIS ORDER.**



Darrell L. Ruban
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Field Administrator
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