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MOTOR CARRIER AND SURVIVAL FACTORS

Group Chair's Factual Report - Supplemental

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A. CRASH SUMMARY

For a summary of the crash, refer to the *Crash Information and Summary Report*, in the docket for this investigation.

B. SUMMARY

The purpose of this supplemental report is to provide additional information and documentation to the Motor Carrier Factors and Survival Factors Group Chair Reports.

C. DETAILS OF THE MOTOR CARRIER INVESTIGATION

The Motor Carrier Factors investigation supplemental report focuses on the operations of vehicle 2, a 2013 Chevrolet Express with Micro Bird school bus body (bus), was owned and operated by LBFNY. This supplemental report will highlight the modifications made to the bus and address the violations that were documented by the New York State Department of Transportation (NYSDOT) during the post-crash driver/vehicle examination.

1.0 LBFNY Bus

As discussed in the *Motor Carrier Factors Group Chair Report*, the owner/operator for Vehicle 2 (bus) was identified as LBFNY LLC. The carrier's PPOB is located at: 16 Drumlin Drive, Weedsport, New York 13166. The carrier was registered as an LLC and as such the designated Managing Member. Per MCMIS the carrier was issued USDOT number 3773075 on December 1, 2021.¹ According to MCMIS, the carrier was "REVOKED" from the New Entrant Safety Program due to a "No-Show" for the Safety Audit. Subsequently, the carrier was placed under a Federal Out-of-Service Order effective April 26, 2022.²

During the post-crash inspection of the crash involved bus, the NTSB, NYSP, and NYSDOT noted that the bus, had been modified, by the installation of two additional right-side seating rows to the rear of bus. NTSB investigators questioned the carrier owner about the installation and circumstances of the additional seating rows. The carrier owner stated that the LBFNY mechanic modified the bus by adding the rows shortly after the bus (along with additional LBFNY buses) were purchased in November 2021.

¹ See Motor Carrier Attachment: LBFNY MCS-150.

² See Motor Carrier Attachment: FMCSA Order to Revoke and Cease Letters.

Also discovered during the post-crash inspection was that the crash-involved bus had state of Montana license plates. During the interview with the owner, he was asked why the bus was registered in Montana since his business operations were in New York. He answered:

“Avoid sales tax and just- Montana just seemed to be the easiest state to register motor vehicles in and it was a little faster process than New York State.”³

The Montana vehicle registration for the crash involved bus (Montana tag 5-93787B) showed an issue date of June 14, 2022, and an expiration date of June 14, 2023. The carrier stated that the company did not have any brick-and-mortar building or any offices or fleet in Montana and used a third-party service to become an LLC in Montana. The carrier further stated that he used a mail forwarding service to receive related company mail and correspondence from the Montana PO Box address.

Per the post-crash NYSDOT Driver Vehicle Examination Report, one of the violations found was for operating a passenger CMV with an incorrect registration because the bus was registered in Montana, not New York as required, and the carrier had no physical address in Montana (see violations listed below). Another violation was for failing to pay the Unified Carrier Registration (UCR) fee although registered interstate for 2023.⁴ The UCR is a program that requires individuals or companies that operate commercial motor vehicles in interstate or international commerce to register their business with a participating state and pay an annual fee based on the size of their fleet to supplement funding for state highway motor carrier registration and safety programs.⁵

The NYSDOT post-crash Driver/Vehicle Examination discovered 32 violations which identified infractions with the bus driver as well as the subject bus.⁶ Below are some of the violations included numerous designated as Out -of- Service violations:

- Operating a CMV without an active USDOT number.
 - **OOS violation.** 392.9b(a)(1) Intra-state carrier: Operating a commercial motor vehicle in intrastate commerce without an active

³ See Motor Carrier Attachment: LBFNY Owner Interview in the docket for this investigation.

⁴ UCR is established by federal law in the UCR Act, which is part of the federal highway reauthorization bill known as the Safe, Accountable, Flexible, Efficient Transportation Equity Act, A Legacy for Users (“SAFETEA-LU”), Public Law 109-59, enacted August 10, 2005.

⁵ Unified Carrier Registration, or UCR, is authorized under federal statute, the Unified Carrier Registration Act, which is to be found at Title 49 of the U.S. Code, section 14504a. Both Montana and New York are UCR participating states.

⁶ See Motor Carrier Attachment: New York State Department of Transportation Driver/Vehicle Examination Report.

UDOT number when required. Carrier's USDOT # made inactive on 4/26/2022 due to failure to submit to safety audit.

- Operating a passenger CMV with an incorrect registration, bus registered in Montana and not in New York as required.
 - 392.2RG Operating a passenger CMV with an incorrect registration. Bus registered in Montana, not NY as required. Carrier has no physical address in Montana.
- CMV not marked in accordance with regulations.
 - 390.21(T)(a) Carrier USDOT# not displayed on either side as required.
- Operating a CMV without proof of periodic/annual inspection.
 - 396.17(c) Bus has no proof of any periodic/annual inspection.
- Failure to pay Unified Carrier Registration fee.
 - 392.2. Carrier registered interstate without paying UCR fees for 2023.
- Operating a CMV without a valid commercial driver's license (CDL).
 - **OOS violation.** 383.23(a)(2) Operating a CMV without a CDL on 1/28/2023.
- Operating a CMV without a valid medical examiner's license
 - **OOS violation.** 391.41(a)(1) Operating a passenger-carrying vehicle without a valid medical certificate. Driver does not possess a valid medical examination certificate.
- Motorcoach or passenger-carrying vehicle operating with seating not secured in workmanlike manner.
 - **OOS violation.** 393.91 Motor coach or passenger-carrying vehicle operating with seating, occupied or not, not secured in a workmanlike manner. Rear, right side. Two bench seats added in a non-workman like manner. Self-tapping, lag screws securing seat to floor. Riveted to side door. Two small tack welds.
- Operating a CMV with modified seats not adhering to NHTSA standards.
 - **OOS violation.** 393.93(b)(3): Temporary Seating: Vehicle must conform to the requirements of FMVSS 207.
 - **OOS violation.** 390.33 Operating a motor coach or other passenger-carrying vehicle with seating, secured or unsecured, in excess of the manufacturer's designed seating capacity. 2 bench

seats were added (2 right rear) not according to NHTSA standards, making the total seating capacity 21 adults. No final modifier tag.

- Failing to equip bus with seatbelts.
 - 393.93(a) Failure to equip bus with seat belts. Both rearmost, right-side seats do not have seatbelts.

Per the post-crash NYSDOT Driver/Vehicle Examination Report:

Bus was previously in NYSDOT semi-annual inspection bus program. Its last inspection was in July 2021. At which time it was inspected as a 15-passenger bus. 3 seats appear to have been added since July 2021. Left rear appears to be reinstalled according to manufacturer specs. Two right rear bench seats do not match the other seats. They are simply screwed to the floor and tack welded to the wheelchair door. These two bench seats do not have seat belts.

As a result of the NYSDOT Driver/Vehicle Examination, both the driver and the bus were placed Out-of-Service (OOS).⁷ For additional information, see Motor Carrier Attachment: New York State Department of Transportation Driver/Vehicle Examination Report.

D. DETAILS OF THE SURVIVAL FACTORS INVESTIGATION

The Survival Factor's investigation supplemental report section focuses on the modifications to the 2013 Chevrolet Express 4500 (Micro Bird school bus), hereafter referred to as a bus.

1.0 Bus Modifications

The subject bus was a 2013 Chevrolet Express 4500 chassis with an 18-passenger converted Micro Bird school bus body that was previously utilized as a school bus in New York State. All school buses are subject to the NYSDOT bus inspection program. Prior to being purchased by LBFNY, the crash-involved bus was operated by Hilton Central School in Hilton, New York. It was required to be part of the NYSDOT bus inspection program and required to undergo safety inspections every six months. The vehicle's last NYSDOT vehicle inspection as part of the program was on, July 8, 2021.⁸ The vehicle inspection form showed a seating capacity for 15 adults or 24 children with three wheelchairs positions. The documented mileage during the inspection was 132,985 miles.

⁷ For additional information see: [Out-of-Service Criteria \(cvsa.org\)](https://www.cvsa.org)

⁸ Refer to Survival Factors Attachment: New York State Department of Transportation Form MC300F.
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In October 2021, the bus was retired from the New York school bus system and sold to New York Bus Sales LLC, a bus broker out of Chittenango, NY. The broker sold the bus to LBFNY (the operator of vehicle 2) involved in this crash. After purchasing the bus on November 4, 2021, LBFNY registered the bus in New York on November 17, 2021, and was issued a New York bus license plate. On November 30, 2021, LBFNY obtained a USDOT number.⁹ The bus then entered into the Federal Motor Carrier Safety Administration (FMCSA) New Entrant program where LBFNY was required to go through a safety audit. For additional information refer to the *Motor Carrier Factors Factual Report* in the docket for this investigation.

After purchasing the bus, the owner of LBFNY had the wheelchair lift system removed, and the wheelchair lift door made inoperable. In place of the wheelchair lift and tie-downs for wheelchairs, LBFNY installed two seat rows for passengers. The new seat rows did not contain seat belts and had lower seatbacks (24 inches vs 29.5 inches) than the originally installed bus seats. The two added seat frames were bolted to a piece of angle iron that was spot welded to the sidewall and across the wheelchair lift door. The seat legs were attached to the floor using tap screws that were just drilled into the wood floor. Post-crash examination showed that both sets of seats remained firmly attached to the floor and sidewall. The modifications were performed by a mechanic employed by LBFNY at their facility. The seat manufacturer of the added seats is unknown. The date of the alterations is unknown however during the NTSB interview with the LBFNY owner, they stated the seats were added by their mechanic shortly after the buses were purchased.

As noted in the post-crash vehicle inspection by the NYSDOT, the rows of seats that were added did not conform to the requirements of FMVSS 207 Seating Systems,¹⁰ and the bus was in violation of §393.93B3 an OOS violation.^{11, 12} LBFNY provided no documentation showing that they ever attempted to inquire about NYSDOT requirements regarding the alterations and modifications made to vehicles. Per the post-crash NYSDOT Driver/Vehicle Examination report, violation of 390.33, LBFNY did not have a final modifier tag for the bus.

§ 390.33 Commercial motor vehicles used for purposes other than defined.

Whenever a commercial motor vehicle of one type is used to perform the functions normally performed by a commercial motor vehicle of another type, the requirements of this subchapter and part 325 of subchapter A shall apply to

⁹ A USDOT number is a unique identifier assigned by the U.S. Department of Transportation to commercial motor vehicles that operate in interstate commerce, including trucks, buses, and other vehicles transporting people or goods across state lines.

¹⁰ FMVSS 207 Seating Systems - This Standard applies to MPVs, trucks and buses. It establishes requirements for seats, their attachment assemblies, and their installation. It also specifies minimum forces and torques that seats, except jump-type or side-facing seats, must be able to withstand.

¹¹<https://www.fmcsa.dot.gov/faq/does-usdot-have-regulation-requiring-working-safety-belts-commercial-vehicles>

¹² Refer to Motor Carrier Factors Attachment: New York State Department of Transportation Driver/Vehicle Examination Report

the commercial motor vehicle and to its operation in the same manner as though the commercial motor vehicle were actually a commercial motor vehicle of the latter type. *Example:* If a commercial motor vehicle other than a bus is used to perform the functions normally performed by a bus, the regulations pertaining to buses and to the transportation of passengers shall apply to that commercial motor vehicle.

A letter to LBFNY dated December 10, 2021, Chief Motor Carrier Investigator of the NYSDOT's Passenger Carrier Safety Bureau described the vehicle as a 2013 Chevrolet bus with a seating capacity of 18, and "Used to transport workers to/from construction jobsites and hotels etc. Not to be used to transport passengers in school service (including religious instruction) or "for hire." The NYSDOT exemption letter stated the bus did not require an inspection by NYSDOT because:

The owner has described the intended use of the vehicle as a type that does not fall under the jurisdiction of NYSDOT in accordance with the NYS Transportation Law and department regulations.

The letter stated the reason for the exemption was the vehicle was only being used incidental to a non-transportation enterprise and is not open to the public. The NYSDOT letter then stated that the bus would not require a copy of the NYSDOT Vehicle Inspection form (MC300) as a pre-requisite to registering/renewal of the vehicle's NYS Motor Vehicle Registration.¹³ The bus would require either a New York state annual vehicle or heavy vehicle inspection as required by New York State Department of Motor Vehicle regulations (15 NYCRR 79.2). The letter also stated:

The owner is advised that using the vehicle in a capacity other than described or physically altering the vehicle may invalidate this exemption letter. The letter is not transferrable and not intended to exempt or supersede interstate commercial motor vehicle requirements. It is issued for New York State periodic inspection purposes only. The operation of your vehicle may constitute operations of a Commercial Motor Vehicle. As such, CDL requirements and FMCSA requirements (USDOT Number) may be applicable.

This exemption letter was later rescinded due to LBFNY never having a FMCSA New Entrant Safety Audit performed, no inspection performed, and transported employees across state lines, which is considered interstate not intra-state as per the reason for the exemption provided in the letter.

¹³ Refer to Survival Factors Attachment: Exemption Letter to LBFNY from New York State Department of Transportation Chief Motor Carrier Investigator.

E. ATTACHMENTS

Motor Carrier Attachment: New York State Department of Transportation Post-Crash Driver Vehicle Examination Report.

Survival Factors Attachment: July 2021 New York State Vehicle Inspection Form MC300F.

Survival Factors Attachment: Exemption Letter to LBFNY from New York State Department of Transportation's Chief Motor Carrier Investigator.

Submitted by:

Ronald Kaminski
Senior Survival Factors Investigator

Michael S. Fox
Senior Highway Accident Investigator