

**BRITISH COLUMBIA SECURITIES COMMISSION**  
*Securities Act, RSBC 1996, c. 418*

Citation: Re Morabito, 2023 BCSECCOM 150

Date: 20230403

**Global Crossing Airlines Group Inc. (formerly known as Canada Jetlines Ltd.)  
and Mark Morabito**

<b>Panel</b>	Judith Downes	Commissioner
	James Kershaw	Commissioner
	Marion Shaw	Commissioner

**Submissions completed**    March 14, 2023

**Ruling date**                      April 3, 2023

**Counsel**

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James Torrance	

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Jenna Green	

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**Second Supplemental Ruling on Disclosure**

**I. Introduction**

- [1] By notices of application dated March 24, 2022 and April 19, 2022 respectively (Disclosure Applications), Mark Morabito (Morabito) and Global Crossings Airlines Group Inc. (Global) sought orders requiring the executive director to disclose a broad range of materials in his possession on the basis that the executive director had failed to disclose to the respondents all relevant documents in his possession or control.
- [2] To date, this panel has issued three rulings on the Disclosure Applications:
- (a) *Re Morabito*, 2022 BCSECCOM 433 (First Ruling),
  - (b) *Re Morabito*, 2022 BCSECCOM 440 which extended the deadline set in the First Ruling for the filing of certain documents and information, and
  - (c) *Re Morabito*, 2023 BCSECCOM 83 (Supplemental Ruling).

**II. Procedural History**

- [3] The First Ruling required, among other things, the executive director to provide lists of certain documents and categories of documents not disclosed by the executive director,

describing those documents and categories of documents in sufficient detail so that the grounds upon which the executive director had not disclosed them could be assessed.

- [4] On November 7 and 16, 2022, in response to the First Ruling, the executive director provided additional disclosure to the respondents as well as reasons for non-disclosure of certain documents and categories of documents. The information with respect to the grounds for non-disclosure was contained in an appendix to a letter from counsel for the executive director (Information Appendix).
- [5] The Information Appendix included descriptions of 12 documents relating to communications with an individual which had not been disclosed by the executive director. The basis for non-disclosure with respect to four of those documents (Settlement Documents) was a claim of settlement privilege and, for the balance of the documents (Irrelevant Documents), an assertion that they were not relevant.
- [6] By letter dated January 3, 2023, Morabito advised that, after reviewing the Information Appendix, he was limiting the scope of the further disclosure sought in his Disclosure Application to ten schedules, Schedules A to J, identified in the letter (Morabito Schedules).
- [7] Schedule I of the Morabito Schedules included the Settlement Documents and the Irrelevant Documents, which we refer to collectively as the “Schedule I Documents”.
- [8] In his January 3 letter, Morabito also disputed that the executive director had established settlement privilege with respect to the Settlement Documents and argued that all of the Schedule I Documents were relevant and ought to be disclosed.
- [9] On January 6, 2023, the panel advised the parties that it would consider submissions on the issue of settlement privilege, which the parties subsequently provided.
- [10] On January 17, 2023, as part of his reply submissions on the issue of settlement privilege, the executive director provided to the respondents the Schedule I Documents, in redacted form.
- [11] By letter dated January 18, 2023, Morabito advised that he sought unredacted copies of all documents identified in his January 3, 2023 letter. He disputed, in particular, the redactions made by the executive director to the Schedule I Documents.
- [12] On February 1, 2023, the executive director provided to the respondents further disclosure which consisted of the documents listed in Morabito Schedules A to H in redacted form.
- [13] On February 17, 2023, the Commission issued the Supplemental Ruling which required the executive director:

- (a) to file with the Hearing Office and provide to the respondents further information with respect to the grounds upon which the executive director had not disclosed the redacted portions of certain categories of documents in certain of the Morabito Schedules,
- (b) to file with the Hearing Office the redacted Schedule I documents so that the panel could decide whether these documents should be disclosed to the respondents in an unredacted form, and
- (c) to file with the Hearing Office the undisclosed documents in Schedule J of the Morabito Schedules so that the panel could decide whether those documents should be disclosed to the respondents.

[14] On February 28, 2023, the executive director provided information and documentation to the Hearing Office and to the respondents in response to the Supplemental Ruling.

[15] On March 14, 2023, and in response to a direction from the panel, the executive director:

- (a) provided to the Hearing Office an unredacted copy of one of the Settlement Documents, and
- (b) provided to the Hearing Office and to the respondents additional information with respect to certain information in the Morabito Schedules that the executive director advised was personal or private third-party information.

### **III. Ruling**

[16] After considering the submissions of the parties on the Disclosure Applications and the information and documentation provided by the executive director, the Commission orders:

- (a) that the executive director has established his claim for settlement privilege over the redacted portions of the Settlement Documents, and that the redacted material need not be disclosed, and

(b) that the executive director has met his disclosure obligations with respect to the documents in the Morabito Schedules, and that redacted materials within those documents need not be disclosed.

April 3, 2023

**For the Commission**

Judith Downes  
Commissioner

James Kershaw  
Commissioner

Marion Shaw  
Commissioner