



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

MEMORANDUM

TO: The Commission
Staff Director
General Counsel
FEC Press Office
FEC Public Records

FROM: Marjorie W. Emmons/Mary W. Dove *MWD*
Secretary of the Commission

DATE: June 26, 1996

SUBJECT: COMMENTS: PROPOSED AO 1996-23

Transmitted herewith is a timely submitted comment from Mr. Jan Witold Baran.

Proposed Advisory Opinion 1996-23 is on the agenda for Thursday, June 27, 1996.

Attachment:

7 pages

WILEY, REIN & FIELDING

1776 K STREET, N.W.
WASHINGTON, D. C. 20006
(202) 420-7000

JAN WITOLD BARAN
(202) 429-7330

June 26, 1996

FACSIMILE
(202) 420-7049

Ms. Marjorie Emmons
Commission Secretary
Federal Election Commission
999 E Street, N.W.
Washington, D.C. 20463

ATTN: Jonathan Levin

Re: Draft Advisory Opinion 1996-23

Dear Ms. Emmons:

Pursuant to the Federal Election Commission's revised Advisory Opinion Procedures, the ITT Corporation and the ITT Corporation Political Action Council submits these written comments with respect to draft advisory opinion 1996-23. First, these comments will address the draft's approach to this disaffiliation issue and seek further clarification of why the ITT Corporation Political Action Council and the ITT Industries Corporate Citizenship Committee are not disaffiliated at this time. Second, we wish to submit additional facts for the Commission's consideration.^{1/}

Comments

While the ITT Corporation Political Action Council understands that there is not a precise standard or formula for when two committees may disaffiliate from each other, the draft, as written, does not enable us and those similarly situated to make an assessment of when disaffiliation occurs. Frankly, given the facts

^{1/} While the draft advisory opinion addresses the affiliation between the ITT Corporation Political Action Council, ITT Industries Corporate Citizenship Committee, and the ITT Hartford Advocates Fund, these comments will not address the disaffiliation of the ITT Hartford Advocates nor ITT Hartford unless applicable to the disaffiliation of the ITT Corporation Political Action Committee from the ITT Industries Corporate Citizenship Council.

WILEY, REIN & FIELDING

Ms. Marjorie Emmons
June 26, 1996
Page 2

as presented in the request, we do not understand why the ITT Corporation Political Action Council and the ITT Industries Corporate Citizenship Committee are not disaffiliated nor what the threshold for disaffiliation would be. Instead, the preliminary conclusion reached by the draft that the two PACs may not disaffiliate seems intuitive. However, we urge the Commission to be clear in articulating a standard which will give us clear guidance as to why we are not disaffiliated and when we may be disaffiliated.

The draft opinion confirms that the Commission's central inquiry will be whether the committees are "established, financed, maintained or controlled" by the same corporation. Further, in the context of a corporate break-up, the central issue appears to be one of "control," especially here, where there is no dispute that the two separate segregated funds are not established, financed or maintained by the same corporation.

As the draft recognizes, many of the indicia of control are simply not present in this situation. The facts which argue for disaffiliation, as recognized in the draft (pages 2-5, and 8) are that:

- ITT Industries and New ITT specialize in "different, non-overlapping" business areas;
- neither company owns any of the stock of any other company;
- the overlapping shareholder base of the two companies is reducing rapidly so that as of March 29, 1996, 42.6 percent of ITT Industries stock has been traded and 34.2 percent of New ITT stock had been traded;^{2/}
- there are no overlapping officers between the companies;
- ITT Industries may not participate in the governance of the New ITT through provisions of governing documents, contracts, other rules, or practices and ITT Industries may not hire, demote, or otherwise control the decisionmakers of New ITT and vice-versa;

^{2/} Updated figures are provided infra at p. 4.

WILEY, REIN & FIELDING

Ms. Marjorie Emmons

June 26, 1996

Page 3

- the entire New ITT Board was reelected by its shareholders on May 14, 1996, and the entire ITT Industries Board was reelected by its shareholders on May 21, 1996.
- The PACs of the two companies operate independently and there have been no transfers between them since the break-up.

In the past, the Commission has appeared to weigh each of these factors heavily in the determination that two PACs were disaffiliated. Having passed through all of these apparent thresholds, the focus of the draft analysis appears to be the overlap between the two Boards and the continuity of Board members which, as written, seems to inexplicably outweigh each of the other factors which would merit disaffiliation. Specifically, the draft notes that three of seven members (approximately 43 percent) of the ITT Industries Board are also on the Board of the New ITT and suggests (at 9) that therefore an "ongoing relationship between the companies is clearly indicated."^{1/} However, overlapping memberships on the board do not suggest an ongoing relationship between the companies, rather, it suggests only an ongoing relationship between each company and these particular former directors.

Indeed, we wish to bring to the Commission's attention normal standards of fiduciary duties which attach to directors of corporations. That is, when acting in their capacities as directors of ITT Industries, the three overlapping board members legally cannot consider any interest other than those of ITT Industries as a matter of fiduciary responsibility. See, e.g., Clark, Boardman, Callaghan, Fletcher Cyc. Corp. § 837.50 et seq., (Perm Ed). In other words, those three overlapping directors are precluded by law from considering the interest of New ITT when making decisions on behalf of ITT Industries. Under these

^{1/} The draft also attaches significance to the fact that "Old ITT still survives as ITT Industries, and thus ITT Industries was responsible for the formation of the other two companies as publicly-held entities." However, the proxy statement makes clear that ITT Industries was reincorporated in Indiana and is thus not the same corporation as the "Old ITT." Moreover, even if this premise were correct, that the Old ITT survives, this would be true of any company that has gone through a corporate break-up and thus can not possibly have relevance to this determination.

WILEY, REIN & FIELDING

Ms. Marjorie Emmons
June 26, 1996
Page 4

circumstances, it is unclear why the overlap should have the significance currently attached to it in the draft advisory opinion.

Moreover, even if it were true that there were an ongoing relationship between the companies, the draft itself acknowledges that these overlapping directors cannot control ITT Industries because they represent less than 50 percent of the ITT Industries Board. Given this acknowledgment, and in light of the otherwise valid recognition of the separateness of the two companies, it seems incongruous to find that disaffiliation is "premature" and we would hope that the General Counsel's Office would reconsider this position.⁴ However, if the Commission chooses to adopt this approach, it would leave ITT Industries in the position of not knowing when it may disaffiliate and whether there are any other factors that are silently playing a role in the decision. We would hope that the Commission would articulate a clearer standard as to when we may disaffiliate from the ITT Industries Corporate Citizenship Committee.

Additional Facts

Even though it is our position that the facts as presented in our request should satisfy any standard for disaffiliation, New ITT wishes the Commission to consider the following new facts when reaching its conclusion. First, as of the date of June 25, 1996, 65.7 percent of the stock of ITT Industries had been publicly traded since the split. Furthermore, as of June 26, 1996, 57.75 percent of New ITT stock had been traded. Therefore, the vast majority of shareholders of the two companies have nothing to do with one another and the fact that they elected the Boards of Directors reaffirms the independence of the two companies and the directors from one another.

Second, yesterday, June 25, 1996, the Board of ITT Industries met and expanded from seven to eight (ITT Industries Press Release attached). This new outside director is not in any way affiliated with either New ITT corporation or the Board of New ITT. This now leaves the ITT Industries Board with an overlap of only 3 of 8

⁴ The draft also suggests that pursuant to agreement the two companies will have a continuing relationship. However, those agreements govern the break-up and would exist between any companies that break up. This does not constitute a continuing relationship.

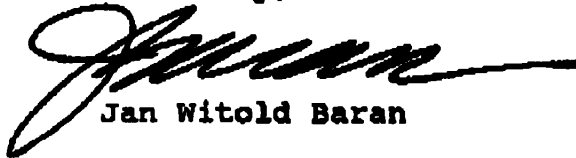
WILEY, REIN & FIELDING

Ms. Marjorie Emmons
June 26, 1996
Page 5

Board members (or 37.5 percent) from the New ITT. Under these circumstances, New ITT believes that disaffiliation is appropriate.

We trust that the Commission will consider these comments and new facts in reaching its decision.

Sincerely,



Jan Witold Baran

ITT Industries

AUTOMOTIVE
DEFENSE & ELECTRONICS
FLUID TECHNOLOGY

ITT Industries, Inc.
1 West Red Oak Lane
White Plains, NY 10604
Tel: (914) 641-2030
Fax: (914) 898-7957

FOR IMMEDIATE RELEASE
June 25, 1996

Contact: Ralph D. Allen
ITT Industries
914-641-2030

Patrick Carle
914-641-2160

www.itind.com

ITT INDUSTRIES NAMES SIDNEY TAUREL, PRESIDENT, COO OF ELI LILLY AND COMPANY TO BOARD OF DIRECTORS

White Plains, NY, June 25, 1996 -- ITT Industries, Inc., a leading global, diversified manufacturing firm, today elected Sidney Taurel, president and chief operating officer of Eli Lilly and Company, to its board of directors. Taurel is the second board member named since ITT Industries (NYSE:IIN) became an independent company in late December.

"Sidney brings a broad range of international marketing and management experience to our board. His significant knowledge of the trends shaping business in key emerging markets such as Latin America will be a true asset to ITT Industries as we strive to be the best diversified manufacturing company in the world," said Travis Engen, chairman, president and chief executive of ITT Industries. ITT Industries now has eight directors on its board.

Taurel, who was promoted to his present position at Lilly in February of this year, had been executive vice president and president of the company's pharmaceutical division since January 1993. He has been a member of the Lilly board of directors since July 1991 and is chairman of the company's operations committee.

Throughout his 25-year career at Eli Lilly and Company, Taurel has worked around the world in helping the company successfully enter and prosper in international markets, from Brazil to Eastern Europe.

Taurel received his undergraduate degree from Ecole des Hautes Etudes Commerciales in Paris and a masters of business administration degree from Columbia University. He is chairman-elect of the Pharmaceutical Research and Manufacturers of America (PhRMA).

-2-

Taurel also is a member of the board of the Indianapolis Symphony Orchestra, the board of overseers of the Columbia Business School, and the board of the RCA Tennis Championships.

ITT Industries is a leading worldwide diversified manufacturing company, with 1995 sales of \$8.4 billion from its three primary business segments: automotive, defense & electronics, and fluid technology. ITT Industries, through its ITT Automotive subsidiary, is one of the world's largest independent suppliers of systems and components to automotive manufacturers. The company, through its ITT Defense & Electronics business, is a world leader in the design, manufacture and support of high technology electronic systems and components for defense and commercial markets. ITT Industries, through ITT Fluid Technology, is one of the world's leading manufacturers of products, systems and services for the movement, measurement, and control of fluids.

In addition to the New York Stock Exchange, ITT Industries' stock is traded under the symbol (IIN) on the Basel, Bern, Frankfurt, Geneva, Lausanne, London, Midwest, Pacific and Paris exchanges.
