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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 8, 1996

**MEMORANDUM**

TO: The Commission

THROUGH: John C. Surina  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

N. Bradley Litchfield  
Associate General Counsel

Jonathan M. Levin *jz*  
Senior Attorney

SUBJECT: Revised Draft AO 1996-23

At the Open Session on June 26, 1996, the Commission considered Draft Advisory Opinion 1996-23 (Agenda Document #96-71). At that meeting, this office proposed to the Commission that the agenda draft be revised to reach a different conclusion in view of further information provided by the requester's counsel in his comments on the draft. The Commission then voted to return the draft opinion to this office for redrafting pursuant to the meeting discussion and to have this office circulate the revised draft on a tally vote basis.

In accordance with the Commission's determination, the attached draft concludes that the PACs of all three of the companies are disaffiliated with each other, instead of concluding that disaffiliation between the PACs of New ITT and ITT Industries was premature and that only the PAC of ITT Hartford was disaffiliated from the PACs of the other two companies.

Memorandum to the Commission

Page 2

The changes from the agenda draft are in bold print. Most of the bolded language appears in the last three pages of the draft. Pursuant to the Commission's decision, we request that the attached draft be circulated as a tally vote matter.

**Attachment**

1       **ADVISORY OPINION 1996-23**

2  
3       **Jan Witold Baran**  
4       **Wiley, Rein & Fielding**  
5       **1776 K Street, N.W.**  
6       **Washington, D.C. 20006**

7  
8       **Dear Mr. Baran:**

9  
10      This responds to your letter dated May 17, 1996, as supplemented by letters  
11      dated June 5, June 20, and June 26, 1996, requesting an advisory opinion on behalf of  
12      ITT Corporation and its separate segregated fund concerning the application of the  
13      Federal Election Campaign Act of 1971, as amended ("the Act"), and Commission  
14      regulations to the disaffiliation of political committees.

15      Your request presents the complex situation of a major corporate reorganization  
16      involving three companies that each serve as the connected organization of a political  
17      action committee. The status of these committees as affiliated or unaffiliated with each  
18      other depends largely upon the relationship among the companies. The factual  
19      background, legal analysis, and conclusions are discussed below.

20      You state that, on December 19, 1995, the former ITT Corporation, a Delaware  
21      corporation ("Old ITT"), completed a corporate break-up which resulted in three  
22      independent, publicly-traded companies. The three companies are (1) ITT Corporation,  
23      which is also known as New ITT ("New ITT"), a Nevada corporation, (2) ITT Industries,  
24      Inc. ("ITT Industries"), an Indiana corporation, and (3) ITT Hartford Group, Inc. ("ITT  
25      Hartford"), a Delaware corporation.

26      The three companies specialize in "different, non-overlapping" business areas.  
27      Specifically, New ITT focuses on the hospitality, gaming, entertainment businesses, and  
28      information services businesses. It operates through six entities: ITT Sheraton  
29      Corporation; CIGA S.p.A.; Caesar's World, Inc.; Madison Square Garden, L.P.; ITT  
30      World Directories, Inc.; and ITT Educational Services, Inc. ITT Industries consists of  
31      three manufacturing businesses: ITT Automotive; ITT Defense & Electronics; and ITT  
32      Fluid Technology. Finally, ITT Hartford and its subsidiaries are insurance providers.

**DRAFT**

1       None of the three companies has an ownership interest in either of the other two  
2 companies.<sup>1</sup> The breakup of Old ITT was accomplished through a stock distribution.  
3 On December 19, 1995, Old ITT distributed all of the shares of common stock in two of  
4 its wholly-owned subsidiaries, New ITT (formerly known as ITT Destinations) and ITT  
5 Hartford, to the shareholders of old ITT. Upon the occurrence of this distribution, Old  
6 ITT merged with a newly formed subsidiary ITT Indiana, to form ITT Industries which  
7 was then reincorporated in Indiana. Approximately 56,000 shareholders of Old ITT thus  
8 received three separate certificates, one representing a continuing ownership interest in  
9 ITT Industries, and one for an ownership interest in each of New ITT and ITT Hartford.  
10 Although there was common ownership of the three companies on the date of the  
11 distribution, active public trading of these stocks has rapidly diversified the ownership of  
12 these shares. You note that during the three month period after the breakup (i.e., up  
13 until March 29, 1996), 42.6 percent of ITT Industries stock, 34.2 percent of New ITT  
14 stock, and 44.8 percent of ITT Hartford stock were publicly traded. You further note  
15 that as of June 25, 1996, 65.7 percent of ITT Industries stock and 57.7 percent of  
16 New ITT stock had been publicly traded since the breakup.<sup>2</sup>

17       None of the officers of one company is an officer of either of the other two  
18 companies. You also assert that "there is no joint management, control or operation of  
19 the three companies." There are, however, some overlaps among the members of the  
20 companies' Boards of Directors. Presently, the Board of ITT Industries has eight  
21 members while the Boards of the other two companies each have 11 members. Two  
22 persons sit on all three Boards. One of these is Rand Araskog, the former Chairman,  
23 President, and CEO of the former ITT Corporation, and presently the Chairman and CEO  
24 of New ITT. The other person is Robert A. Burnett who presently holds no officer  
25 position. There are other overlaps. The Boards of New ITT and ITT Hartford share two  
26 other members, and New ITT and ITT Industries share one other member. As a result of  
27 these overlaps, the eleven-person Board of New ITT shares four members with the

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<sup>1</sup> You note that, although New ITT owns no percentage of either of the other companies, its employees who participate in the New ITT 401(k) plan have funds invested in the other companies' common stock.

<sup>2</sup> You did not present June figures for ITT Hartford.

1 eleven-person Board of ITT Hartford and three members with the eight-person Board of  
2 ITT Industries. The Board of ITT Industries shares two members with the ITT Hartford  
3 Board. Of the 23 individuals who hold the 30 seats on the present Boards, five hold  
4 overlapping memberships.

5 The list of old and new Boards sent by you indicates that there is also some  
6 continuity between the Boards of Old ITT (11 members) and the pre-distribution ITT  
7 Hartford Board (14 members), on the one hand, and the new Boards of the three  
8 companies.<sup>3</sup> Of the five present overlapping members, all were on the Old ITT Board  
9 and all but one served on the Hartford Board. The Proxy Statement of August 31, 1995,  
10 sent by you, which discusses the impending breakup, indicates that the four overlapping  
11 members who served on the old Hartford Board (and who still do) were placed there after  
12 August 31. Of the eight present members of the ITT Industries Board, six were members  
13 of the old Boards; five were members of the Old ITT Board and three were members of  
14 the Hartford Board. Of the 11 present members of the New ITT Board, nine were  
15 members of the old Boards; eight were members of the Old ITT Board, and five were  
16 members of the Hartford Board. Of the 11 present members of the ITT Hartford Board,  
17 ten were members of the old Boards; nine were members of the pre-distribution Hartford  
18 Board and four were members of the Old ITT Board.<sup>4</sup>

19 The Proxy Statement indicates that all of the executive officers of the three  
20 companies were officers of Old ITT or its subsidiaries prior to the distribution. If, prior  
21 to the distribution, an executive officer was with a subsidiary in a particular sector  
22 associated with the three present companies, e.g., manufacturing,  
23 entertainment/hospitality, or insurance, the officers, with one exception, remained with  
24 the corresponding sector.

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<sup>3</sup> In attachments to your request, you list the Boards of Old ITT and the pre-distribution Board of ITT Hartford. You do not, however, list the Board members of ITT Destinations, Inc. which was the name of New ITT before the distribution. It appears from your submission that you consider the Old ITT Board to be the predecessor of the New ITT Board.

<sup>4</sup> You note that two members of the New ITT Board who were not members of the Old ITT Board were (and currently are) members of the Board of ITT Educational Services, now a subsidiary of New ITT. The Proxy Statement indicates that all six of the present Board members of ITT Industries or New ITT that you list as serving on the Old Hartford Board (the four present overlaps plus two others no longer on the Hartford Board) were placed there after August 1995.

1        Prior to the distribution, the first post-distribution Boards of both New ITT and  
2 ITT Hartford were elected by Old ITT as the sole shareholder. The entire New ITT  
3 Board, however, was reelected by the shareholders on May 14, 1996, at their annual  
4 meeting. The entire seven-member ITT Industries Board was reelected by the  
5 shareholders at their annual meeting on May 21, 1996, and the Board added a new  
6 eighth, non-overlapping, member on June 25, 1996. In addition, on May 16, 1996, at  
7 the annual shareholders meeting of ITT Hartford, the shareholders reelected the 10-  
8 member Board and elected an additional eleventh, non-overlapping, member. You  
9 assert that there are no provisions in the Certificates of Incorporation, the Bylaws,  
10 or the Proxy Statement that permit the former parent to retain control over the  
11 Boards of New ITT or ITT Hartford.

12        [Paragraph deleted. First sentence added on to previous paragraph.]

13        You note that, since the breakup, the three corporations have operated as separate  
14 entities and operate in separate business sectors. The Proxy Statement discusses  
15 agreements entered into by the three companies governing their relationship after the  
16 distribution. These include a Distribution Agreement which would govern the  
17 distribution of financial responsibilities and liabilities in accordance with the different  
18 business sectors in which the companies are engaged and the allocation of debt. The  
19 Distribution Agreement also provides that none of the three companies will take any  
20 action that would jeopardize the intended tax consequences of the distribution, but none  
21 of the companies anticipate that this limitation will inhibit its financing or other activities  
22 or its ability to respond to unanticipated developments. There are other agreements  
23 allocating tax liabilities, pertaining to intellectual property rights, including the licensing  
24 and use of the "ITT" name, and pertaining to employee benefit and retirement plans. The  
25 Proxy Statement states that these agreements are comparable to those that would have  
26 been reached by unaffiliated parties in arms-length negotiations.

27        You state that the separate segregated funds of the three corporations operate as  
28 separate entities. Prior to the breakup, three PACs existed. Old ITT's PAC was the ITT  
29 Corporate Citizenship Committee. That committee is now the PAC of ITT Industries  
30 and is now called ITT Industries Corporate Citizenship Committee. Second, Caesars

1 World, Inc., which is now one of the six businesses of New ITT, previously sponsored a  
2 PAC. Immediately after the breakup, the Caesars World PAC was designated as New  
3 ITT's SSF and is now known as the ITT Corporation Political Action Council. Finally,  
4 both before and after the breakup, ITT Hartford supported its own PAC, the ITT Hartford  
5 Advocates Fund, which solicited only ITT Hartford employees.

6 Since the breakup, there have been no transfers of funds among the PACs and no  
7 PAC has contributed to the other. Prior to the breakup, the resources of Old ITT's PAC  
8 were divided between itself and the Caesars World PAC so that, after the breakup, the  
9 PACs of ITT Industries and New ITT would reflect the approximate funds attributable to  
10 the employees that would be associated with each post-breakup company. ITT Hartford's  
11 PAC was not included in this distribution because its funds consisted only of the  
12 contributions of ITT Hartford employees and Old ITT's PAC had not solicited ITT  
13 Hartford's employees. You state, at the time of the breakup, "each PAC was in a position  
14 to and did move forward, as an unaffiliated entity, carrying the funds associated with its  
15 respective employees." You note that, within ten days of the breakup, the new ITT PAC  
16 amended its Statement of Organization to reflect the change in relationship among the  
17 companies and the PACs.

18 You ask whether the New ITT PAC is presently disaffiliated from the ITT  
19 Industries Corporate Citizenship Committee and the ITT Hartford Advocates Fund.

20 The Act and Commission regulations provide that committees, including separate  
21 segregated funds, that are established, financed, maintained or controlled by the same  
22 corporation, person, or group of persons, including any parent, subsidiary, branch,  
23 division, department, or local unit thereof, are affiliated. Contributions made to or by  
24 such committees shall be considered to have been made to or by a single committee. 2  
25 U.S.C. §441a(a)(5); 11 CFR 100.5(g)(2), 110.3(a)(1), and 110.3(a)(1)(ii). In addition, a  
26 corporation may make [ ] communications to and solicit the restricted class (i.e.,  
27 executive and administrative personnel and stockholders, and the families thereof) of its  
28 subsidiaries for contributions to the corporation's separate segregated fund. 2 U.S.C.  
29 §441b(b)(2)(A) and (4)(A)(i); 11 CFR 114.3(a)(1) and 114.5(g)(1).

1           Where an entity is not an acknowledged subsidiary of another entity, as in 11 CFR  
2       110.3(a)(2)(i), Commission regulations provide for an examination of various factors in  
3       the context of an overall relationship to determine whether one company is an affiliate of  
4       another and, hence, whether their respective SSFs are affiliated with each other. 11 CFR  
5       100.5(g)(4)(i) and (ii)(A)-(J), and 110.3(a)(3)(i) and (ii)(A)-(J).<sup>5</sup> The relevant factors in  
6       the situation you have presented are as follows: (A) the ownership by one sponsoring  
7       organization of a controlling interest in the voting stock or securities of another  
8       sponsoring organization; (B) the authority or ability of one sponsoring organization to  
9       direct or participate in the governance of another sponsoring organization through  
10      provisions of constitutions, by-laws, contracts or other rules, or through formal or  
11      informal practices or procedures; (C) the authority or ability to hire, appoint, demote or  
12      otherwise control the officers, or other decisionmaking employees of another  
13      sponsoring organization; (E) common or overlapping officers or employees which  
14      indicates a formal or ongoing relationship between the sponsoring organizations; (F)  
15      members, officers, or employees of one sponsoring organization who were members,  
16      officers, or employees of another organization which indicates a formal or ongoing  
17      relationship or the creation of a successor entity; and (I) an active or significant role by  
18      one sponsoring organization in the formation of another. 11 CFR 110.3(a)(3)(ii)(A), (B),  
19      (C), (E), (F), and (I). In addition, most of the factors set out at 11 CFR 110.3(a)(3)(ii) are  
20      applicable to the relationship between committees. The relevant factors here are: (G)  
21      whether a committee provides funds or goods in a significant amount or on an ongoing  
22      basis to another committee, such as through direct or indirect payments for  
23      administrative, fundraising, or other costs; and (H) whether a committee causes or  
24      arranges for funds in a significant amount or on an ongoing basis to be provided to

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<sup>5</sup> Specifically, the regulations state:

The Commission will examine these factors in the context of the overall relationship between committees or sponsoring organizations to determine whether the presence of any factor or factors is evidence of one committee or organization having been established, financed, maintained or controlled by another committee or sponsoring organization.

1 another committee. 11 CFR 110.3(a)(3)(ii)(G) and (H). The list of ten circumstantial  
2 factors set out at 11 CFR 110.3(a)(3)(ii) is not an exclusive list, and other factors may be  
3 considered. See Advisory Opinion 1995-36.

4 In analyzing the significance of these factors when presented with a request for  
5 the disaffiliation of companies, the Commission does not have a formula whereby the  
6 presence of a specific number of factors is sufficient or insufficient for continued  
7 affiliation. In proposed disaffiliation situations, the historic background of the  
8 relationships provides a context for assessing these factors. See Advisory Opinions 1995-  
9 36 and 1994-9.

10 [Deletion of paragraphs summarizing prior disaffiliation AOs]

11 With respect to the proposed disaffiliation of the ITT companies, the Commission  
12 notes that none of the companies owns any stock in either of the other companies. 11  
13 CFR 110.3(a)(3)(ii)(A). As a related matter, the common shareholder base of the  
14 companies appears to be reducing rapidly. Although shareholders of each company were  
15 the same right after the distribution, there has been vigorous public trading of stock in all  
16 three companies since then. The Commission further assumes that no single group of  
17 shareholders from one company will own a controlling interest of the stock of one of the  
18 other companies. (See footnote 1.) See Advisory Opinions 1994-9 and 1993-23. See  
19 also Advisory Opinion 1989-17.

20 As stated above, you assert that there is no joint management, control, or  
21 operation of the three companies. You also assert that neither ITT Industries nor ITT  
22 Hartford may participate in the governance of New ITT through provisions of governing  
23 documents, contracts, other rules, or practices, nor do those companies have the right to  
24 hire, demote or otherwise control the decisionmakers of New ITT. You also state that  
25 New ITT does not have this kind of authority over ITT Industries or ITT Hartford. See  
26 11 CFR 110.3(a)(3)(ii)(B) and (C).<sup>6</sup> In connection with this, there are contractual  
27 agreements among the three companies governing the relationships after the distribution.

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<sup>6</sup> The Commission assumes that these representations as to New ITT's relationship with ITT Industries and ITT Hartford would also apply to the relationship of each company with each of the other two.

1    Although the Commission does not have materials to fully determine the effect of these  
2    agreements, they appear, from the description in the Proxy Statement, to be aimed at  
3    sorting out liabilities and obligations that exist as an outgrowth of their previous  
4    relationship, and do not appear to be aimed at continuing one company's control over  
5    another. See **Advisory Opinions 1994-9 and 1993-23.**

6       It appears that the factors related to the PACs themselves are not present. Prior to  
7    the breakup, there were transfers of funds to prepare for the post-distribution separation  
8    of operations. Since the breakup, it appears that there have been no transfers or  
9    contributions between the PACs, and there is no indication that one PAC will solicit  
10   contributions to be made to another PAC. See 11 CFR 110.3(a)(3)(ii)(G) and (H).

11      **On the other hand, there is some continuity between the Board of Old ITT,**  
12    which was reincorporated as ITT Industries, and the Boards of New ITT and ITT  
13   Hartford. It is expected that companies that are spun off from another company  
14   would include, on their Boards, some persons who were members of the older  
15   company's Board. Standing by itself, such a succession may not be particularly  
16   significant. However, when this is coupled with the fact that these Boards retain old

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Board members who have stayed on as overlapping members, i.e., members who  
will not be associated just with the company of one business sector, then an ongoing  
relationship between the companies may be indicated. See 11 CFR 110.3(a)(3)(ii)(E)  
and (F).

With respect to the active or significant role of one sponsoring entity in the  
creation of another, Old ITT still survives in reincorporated form as ITT Industries,  
and thus ITT Industries was responsible for the formation of the other two  
companies as publicly-held entities. See 11 CFR 110.3(a)(3)(ii)(I). However, it also  
may be posited that these three entities were newly constituted out of the events

25   related to the distribution and that none of the entities formed each other. In  
26   addition, all three entities existed in some form prior to the distribution.

27       The Commission considers the three previous factors, those relating to  
28   overlaps and continuity, to be significant in reaching its conclusion. See **Advisory**  
29   **Opinions 1995-36, 1994-9, 1987-21, and 1986-42.** There is, however, a significant

1 countervailing consideration directly related to these factors. Each company has  
2 held a shareholder election of the Boards in May 1996. See Advisory Opinion 1995-  
3 36. Thus, not only were the Boards of New ITT and ITT Hartford (originally  
4 chosen by Old ITT) now selected by the companies' new shareholders, but the  
5 Boards of the three companies were reelected at a time when there had been  
6 substantial divergence from the original common ownership of the companies. See  
7 Advisory Opinion 1993-23. In addition, as indicated above, the ITT Hartford Board  
8 and the ITT Industries Board were each enlarged by one non-overlapping member  
9 since the distribution.

10        Accompanying these events is the fact that the overlap that presently exists is  
11 substantially outweighed by the presence of non-overlapping members. The eight-  
12 person ITT Industries Board has five members who are not on the New ITT Board  
13 and six who are not on the ITT Hartford Board. On the 11-person New ITT Board,  
14 there are eight who do not overlap with ITT Industries and seven who do not  
15 overlap with ITT Hartford. On the 11-person Hartford Board, nine do not overlap  
16 with ITT Industries.

17 In view of the events and circumstances surrounding the composition of the  
18 Boards and the absence of other factors, discussed above, which pertain to the  
19 ownership and management of the companies and to involvement in PAC activities,  
20 the Commission concludes that the three companies are no longer affiliates of each  
21 other. The PACs of the three companies are therefore not affiliated.

22 This response constitutes an advisory opinion concerning the application of the  
23 Act, or regulations prescribed by the Commission, to the specific transaction or activity  
24 set forth in your request. See 2 U.S.C. §437f.

**25** **Sincerely,**

**27** **Lee Ann Elliott**  
**28** **Chairman**

**30 Enclosures (AOs 1995-36, 1994-9, 1993-23, 1989-17, 1987-21, and 1986-42)**

