

April the 4th , 2022 Eternit Hearing Novara

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Question 1: Was Stephan Schmidheiny aware that the resources invested in the Eternit plants in Italy were insufficient to reduce dust in the workplace?

Question number 2: Did Stephan Schmidheiny fail to allocate the money needed for a radical overhaul of the plants and of the working procedures in the plants for reasons of mere profit, [and or?] did he [instead ?] implement a company policy that, inevitably, implied a huge and fatal exposure of workers and members of the community to asbestos?

The defense expert witnesses Stefania Chiaruttini and Luca Minetto were asked these questions by the (defense) lawyers Astolfo Di Amato and Guido Carlo Alleva, for the Swiss entrepreneur Schmidheiny in the Eternit Bis trial, which is taking place in the Court of Assizes in Novara. The defendant must answer for willful murder of 392 people from Casale Monferrato who died because of the uncontrolled spread of asbestos, whose fiber causes the cancer called mesothelioma.

The two experts are accountants based in Milan, and their CVs show a great and longstanding experience in the study and management of company problems and crises. They have been expert witnesses for Prosecutors, defense and institutions. They are authors of numerous publications and speakers at conferences.

"Correct conduct".

For Chiaruttini and Minetto, the "Swiss reference shareholder ", never mentioned by name, behaved in what can be termed a generally correct manner, with respect to the "economic and regulatory context of the time". This was the starting point of their report, which took up a total of three hours at the April the 4th hearing.

"Look at it through the eyes of the time"

"The Eternit company unquestionably was a major part of our country's industrial history," they began.

The first plant in Italy was opened in Casale in 1907 and that was active for eighty years. The expert witnesses made it clear that the Eternit's corporate events must be examined in the economic and regulatory context of that period; in other words, one must look at what happened " *through the eyes of the time*".

A point that applies both to the work of the defense consultants and to that of the Prosecutor's expert witness, Dr Paolo Rivella must be made: the economic, financial and accounting analyses carried out had to be inferred from estimates or projections, because a considerable part of the accounting papers were destroyed years ago following the flooding of the premises where they were stored in Genoa. The legal headquarters of Eternit Italia were in fact in Genoa.

The historical context

The period of interest is from 1976 to 1986, the so-called *period di garanzia* which the defendant is called to answer for, the decade when he was the Eternit CEO.

Chiaruttini and Minetto started a little further back to analyze the historical context, especially from 1972 when, faced with the difficult situation of the company, it was reorganized. It was the Swiss shareholders, headed by the Schmidheiny family, who took charge of the plan, while the Belgians, who were against putting money into the company and raised doubts about the possibility of good prospects, and gradually withdrew. Thus, in 1973, the Swiss Group became the reference shareholder for Eternit in Italy, with plants in Casale, Bagnoli di Napoli, Siracusa and Rubiera dell'Emilia. At that time, Max Schmidheiny was still at the head of the group, even though testimonies and documents already indicated his son Stephan's active role. Max formally assigned the asbestos sector to Stephan in 1976.

The crisis in the Nineteen Seventies

The expert witnesses retraced the general crisis of the early nineteen seventies they also handed over to the Court articles from [the financial daily] Sole24Ore, including a very recent one published on Sunday, April 3, in which they refer to that period comparing it to the critical situation of today. The crisis was determined by the increase in raw material prices and energy costs, "a bit like now", by the high "cost of loans that affected the whole business world in those years", as well as by the "lack of an industrial policy on the part of the Government" which, the two expert witnesses remarked, was limited, and only in 1984, did the Ministry of Labor declare the industry in crisis.

Re-organization Plan

What did the Swiss Group decide given the context? "In various ways it financially supported the Eternit Italia Group". Why? According to Chiaruttini and Minetto, "for the sole purpose of achieving the objective set in 1972, i.e., re-organizing it from an industrial point of view, bringing Eternit Italia back to past levels of profitability and, through a major investment policy, creating conditions for a long-term competitive advantage over its competitors" [mainly Fibronit and Italtubi, although they were smaller in size]. In other words, the Swiss intervened by "cutting costs, implementing a stronger commercial policy than in the past, the training of managers and, above all, with massive financing and investment". The defense highlighted a total commitment of over 84 billion lire about 40 M €.

Rivella, the public prosecutor's consultant, had given a different interpretation: in his opinion, the Swiss Group's tenacious desire to invest resources in order to raise the Italian Group "despite the large losses generated" was motivated by the Swiss's desire to "maintain a monopoly on the European market and prevent other operators from entering the Italian market".

Financing

Chiaruttini and Minetto believe that since "it was not able to face" the increase in production costs on its own, "the repayment of the bank debt contracted" for loans and sureties and "the huge investments" deemed necessary, the Eternit Italia Group had to "benefit from the contributions" of the Swiss for a total of over 84 billion lire of the time, of which 32 billion lire in capital increases, around 30 billion lire in guarantees for loans and sureties, and around

10 billion lire derived from the sale of shares (equal to 50%) of the Amiantifera di Balangero spa [the asbestos quarry].

In fact, in those years the Italian Group paid to the Swiss Group a little more than 2 billion and 600 million in dividends and royalties.

Amiantifera di Balangero

In 1950, Manifatture Colombo and Eternit acquired 50% of the shares from IRI, and together they established Amiantifera Balangero spa. Rinaldo Colombo, a businessman from Bergamo became its president and died in 1982. In 1983, the company was sold to the Puccini brothers of Rome. A decline followed, until the company went bankrupt in 1990. The sale of the shareholding in Amiantifera earned the Swiss Eternit Group approximately 10 billion lire which, according to the defense consultants, generated cash in favor of the Italian Group “and not, as the prosecutor’s consultant states, to plunder Eternit Italia by removing a piece of the family jewel”.

Investments

The accountants Chiaruttini and Minetto focused on the investments that, according to their reconstruction, totaled 33 billion and 400 million (old Italian Lire) distributed on the four Italian plants. According to the defense consultants, these investments were almost all related to safety in the workplace, even though the balance sheets did not specify the items attributed to safety "because at the time it was not foreseen". They argued that, in addition to direct expenses (for masks, cleaning, maintenance and so on), the modernization of machinery and equipment and technical updating, as well as the establishment of the "SIL" (company unit for hygiene and safety at work), automatically generated safety. In other words, more modern equipment ensured less dust and less dispersion of fibers.

A comparison with competitor Fibronit, the closest in size to Eternit Italy was offered: compared to the 33 billion It Lire disbursed by the Swiss, it invested 24 billion, 9 less. A brief comment on the numerical data, even if it is not the subject of the Eternit Bis trial: the comparison is not very useful, since in terms of safety Fibronit, was not considered an example of virtue, so much so that, especially in Broni and Bari, where it mainly operated, there are very many deaths from mesothelioma. If another number were to be evaluated, that of the victims would show that not enough was done in terms of safety, in one case or another, to prevent it.

To return to Eternit's investments, according to Rivella, the modernization of machinery was primarily aimed at increasing productivity; however, the prosecutor's expert witness had found references on a "sheet of paper" of the money spent between 1973 and 1983 specifically for safety, in the old, abandoned offices of the Casale headquarters: a total disbursements of about 7 billion and 600 million in Italy, "of which 4 million were destined for the Casale plant".

Why introduce these measures?

The thesis of the defense, supported and motivated by its own consultants, is that Schmidheiny was convinced that with the financial support he would succeed in relaunching the Italian group, recovering profitability and competitiveness compared to smaller competitors. History did not prove him right: in 1984 the company went into receivership,

followed by bankruptcy in 1986. This is exactly what Chiaruttini and Minetto believe that Schmidheiny wanted to avoid at all costs because, even more than today, "at that time it represented a disgrace, a disvalue in terms of business and social life".

He was not able to avoid the outcome, but, according to the two defense expert witnesses the Swiss entrepreneur correctly carried out "the normal role of the main shareholder (*azionista di riferimento*) " for Eternit Italia, in "a complex industry where the guidelines had to be shared worldwide". The reference also goes to the manuals of conduct that had to be followed. [were there any such manuals?]

What did SS do?

Here, in brief, is how his role is summarized by the two consultants.

1) Schmidheiny implemented a support plan with financing and investments, of which Chiaruttini and Minetto spoke on April the 4th, with a clear, competent, articulate and as much documented exposition as possible.

2) He took the safety problems of the asbestos sector into consideration and addressed them, even studying the use of new alternative fibers. The memory of those who followed the Eternit 1 maxi-trial in Turin, however, refers to the testimony of the former mayor Riccardo Coppo, when he spoke of the various letters sent to Schmidheiny, between the end of the nineteen seventies and the early eighties, and of the repeated promises in response about the construction of a new plant, replacing the old one in Ronzone which is where alternative fibers to asbestos would have been used. But Swiss commitments were always procrastinated, so much so that Coppo said: "We understood that they were making fun of us".

3) He trained the most important managers, and "it's very right, it's still done this way today" Chiaruttini underlined, adding that "each company of the group had its own CEO to make autonomous choices". A somewhat restricted autonomy, one might say. Still drawing on the memory of the maxi-trial, we remember the letters stamped with the writing "Confidential" and which constituted the confidential exchange of correspondence (through different channels from those through which normal correspondence traveled) between the Italian managing director Luigi Giannitrapani and Stephan Schmidheiny in person, between 1975 and 1983: the letters highlight the role of the owner and manager who instructed the subordinate and the latter gives punctual account of what has been requested.

Next hearing

On Monday, April 11, the expert witnesses Chiaruttini and Minetto will undergo cross-examination by the Public Prosecutors Gianfranco Colace and Mariagiovanna Compare, and by the lawyers of the civil parties.

Two other defense consultants, engineer **Giuseppe Nano** and environmental hygienist **Danilo Cottica**, will also be examined.

NAPLES TRIAL

The Court of Assizes of Naples sentenced Stephan Schmidheiny to 3 years and 6 months of imprisonment for the death caused by asbestos of one of the eight victims - Antonio Balestrieri. The crime was reclassified as manslaughter (*omicidio colposo con colpa cosciente*).

"In the name of the Italian people, on April the 6th 2022 the Court of Assizes of Naples, Circuit 2, issued the following sentence against Schmidheiny Stephan Ernst, born on October 29, 1947": the main judge President Concetta Cristiano read the ruling shortly before 4 p.m., The Swiss defendant's lawyers Astolfo Di Amato and Guido Carlo Alleva attended as did lawyer Laura D'Amico, who represents Afeva (Association of families and asbestos victims) of Casale, which she also does in the Court of Assizes in Novara for 392 dead of asbestos [move word to follow Casale in this sentence Monferrato].

In their indictment, the Public Prosecutors of Naples, Anna Frasca and Giuliana Giuliano, had insisted on the recognition of willful murder, asking for a sentence of 23 years and 11 months for all 8 cases (6 employees of the Eternit plant of Bagnoli and 2 of their relatives). The defense team had [delete instead] fought for the acquittal, arguing that Schmidheniy had done everything to make the working environment in the Bagnoli plant compliant with regulations.

The Assize Court, on the other hand, recognized the responsibility of the defendant, ruling that working conditions were lacking, but did not consider that his behavior was due to malice aforethought, but rather by willful negligence due to intentional misconduct (*colpa cosciente*).

The redefinition of the crime from intentional to culpable (albeit with the aggravating circumstance of willful negligence) automatically triggered the statute of limitations for 6 cases; in another case SS was acquitted "because there is no case" (the Court's motivations will be known in the motivations of the sentence, in 90 days). The sentence of 3 and a half years refers, therefore, for one death.

"The Neapolitan verdict is in line with the Turin verdict for the two deaths in Cavagnolo" observes lawyer D'Amico. Therefore: "The Court has ascertained and affirmed Schmidheiny's responsibility for the compromised environmental conditions at the Eternit plant in Bagnoli, but with recognition of intentional misconduct and not of willful murder". The verdict also states the defendant is banned from any public office for 5 years in addition to the costs to be paid to the plaintiffs including institutions and associations. [will such costs be assessed in this case by the Court of Assizes or any other court?]

The so-called Eternit Bis case was initiated by the Turin Prosecutor's Office in 2014, with the charge of willful murder against the Swiss entrepreneur, was then subdivided by the Turin Judge of the Preliminary Hearing (aka GUP): Cavagnolo (where Schmidheiny was sentenced to 4 years, confirmed in the Court of Appeal at the beginning of March 2022) and now Naples. The largest case, which is being heard before the Court of Assizes of Novara, is underway: the charge by the Public Prosecutors, Gianfranco Colace and Mariagiovanna Compare, is that of willful murder of 392 victims of asbestos in the Casale area.

Could the Naples verdict for the deaths of Bagnoli, as had already happened in Turin for those of Cavagnolo lead to [delete think of] a marked path also for the "Casale case"?

Certainly, the splitting of trials created perplexity from the beginning, because the same defendant had the same behavior in all cases. However, in Casale specific situations of responsibility emerge which, in the other two sites, were missing, or did not emerge.

An example: the crushing of asbestos scrap in the open, in the so-called Ex Piemontese area, at Ronzone, a few hundred meters from the plant, decided and carried out during the period in which Schmidheiny was the manager of Eternit. It is the activity of the bulldozer, repeatedly evoked by witnesses, which went on for hours and hours a day, raising clouds of dust among the houses. The shredded debris was then transported on "trucks" from the yard to the plant, along Via Oggero, to be conveyed to the Hazemag mill and put back into the production cycle. The unions had fought to limit the spread: "At least cover the trucks during transport!" they had repeatedly asked.

There was no crushing in Naples. How come? Because the scrap from Bagnoli was taken to Casale, and everything was processed at the former Piedmontese plant.

Another example: the distribution of dust (containing crocidolite or blue asbestos), outside the factory, with which attics were insulated and courtyards, sports fields and roads were levelled. In Casale and its surroundings had many such sites, and it is the most dangerous.

These are just remarks, on the sidelines of the ongoing trial. It is premature and unwise to predict the outcome.

At the moment in the Novara trial the defense lawyers are examining their experts who are opposing the theses illustrated by the PP's expert witnesses. The comparison, obviously, is focused on societal, hygienic-health, clinical and epidemiological aspects.

If the outlined dates will be respected, as the president of the Court Gianfranco Pezone hopes, by the end of July the trial phase could be over, setting the beginning of the closing arguments in September with a verdict before Autumn is over.

Lawyer Laura D'Amico on the Naples Trial

The first-degree criminal trial against Stephan Schmidheiny, initially accused of having willfully murdered eight people (7 workers of the Eternit plant of Bagnoli and a member of the community) due to the working conditions that for many years had led to an illegal exposure to asbestos fibers, ended today before the Court of Assizes of Naples.

unlawful exposure to asbestos fibers.

The Court of Assizes, accepting the Prosecution's and plaintiffs' reconstruction on this point that is the extreme working conditions at that plant, but did not agree with the count of willful murder that has no statute of limitations, and sentenced the defendant for manslaughter. This led to all cases except for one (relating to a more recent death) falling under the statute of limitations. For the one case SS was sentenced 3 years and 6 months of imprisonment, in addition to having to pay costs to all various associations including Casale Monferrato AFEVA.

Obviously this ruling has not satisfied the victims who are hoping the PP will appeal after the complete verdict is handed out in three months.

The verdict should encourage the Public Prosecutors and the plaintiffs of the trial currently underway at the Novara Court of Assizes of Novara for 392 deaths (Casale Eternit workers and members of the community) where the Swiss tycoon stands accused of willful murder.

A new challenge for the Public Prosecution and for the victims, a battle that will continue to be fought so that justice can finally be obtained for the many victims of asbestos.