

Eternit Bis trial May the 30th, 2022 Hearing

by

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The 392 names of men and women from the Casale area who are listed as victims in the Eternit Bis trial (where the defendant Stephan Schmidheiny is called to answer for their deaths) share a fate: their lives were ended by mesothelioma, the asbestos cancer.

392 diagnoses varied by type - pleura or peritoneum; epithelioid, sarcomatoid or biphasic - but according to the Prosecution (PPs Dr Gianfranco Colace and Dr Mariagiovanna Compare) all were due to the onset of mesothelioma. Every diagnosis, from the most remote to the most recent were assessed by pathologists, consultants of the Prosecution before being included in that ominous list: Dr Piergiacomo Betta (deceased in 2015; he examined hundreds of cases, both as Head of Pathology in Casale and Alessandria, and as expert witness for the Prosecution at the Eternit trial in Turin), Drs Donata Bellis and Narciso Mariani. Clearly the defence Astolfo Di Amato and Guido Carlo Alleva asked their expert witnesses to verify the diagnoses.

The work was carried out by Professor Massimo Roncalli, a renowned pathologist and professor at the Irccs Humanitas in Milan, who spoke at the May the 30<sup>th</sup> hearing before the Novara Assize Court.

The expert was shown the evidence (slides and medical records) in the offices of the court police of the Turin Public Prosecutor's office. He examined it between September the 3rd, 2021 and January the 21st, 2022. This was the same material the prosecution's experts had previously examined: Prof Roncalli concluded as follows: of the 392 cases, he was able to analyse 354, while for the remaining 38 he could no longer find adequate or available material to carry out an accurate and comprehensive examination. For all 354 cases, he classed them into three levels: 1) certain (equivalent to an indisputable diagnosis'), 2) probable, 3) possible (i.e. with a degree of uncertainty of around 50 per cent). In terms of numbers and percentages, here is the final outcome of Roncalli's examination: out of 354 cases, 140 were considered certain (i.e. around 40 per cent), 116 probable (i.e. 32 per cent), 98 possible (i.e. 28 per cent). Before presenting the result, the expert outlined the premises of his work. 'A pathologist,' he said, 'has an ethical duty to prove that a diagnosis is correct beyond doubt. Experience counts,' he continued, 'but instrumental investigations that allow the diagnosis to be 'objective' beyond the pathologist's experience count even more'. Nowadays immuno-histo-chemistry is the diagnostic technique of choice. The professor emphasised that his assessments were made 'with the eyes of today, i.e. by verifying, through the most up-to-date 'markers', even the less recent diagnoses, to ascertain that they were indeed mesotheliomas and not, instead, other forms of cancer that have similar symptoms and can be confused with mesothelioma. For example: lung adenocarcinomas and lymphomas, breast, ovarian or lung carcinomas, or pleural metastases from primary gastrointestinal tumours, or of the kidney, ovary, prostate, pancreas. 'I

would not be able to look with the eyes of the past,' he emphasised, 'if I did, I would be inaccurate and not objective in my assessments' he added.

True. And, in putting on the 'eyes of today, of the 354 cases examined, Professor Roncalli did not exclude any, albeit with varying degrees of certainty compared to the assessments of the prosecution consultants who had examined those cases some time ago. There is no reason to doubt that the prosecution experts also used the 'spectacles of today'; nor did Roncalli raise any doubts to that effect.

In the past, there was no immuno-histo-chemistry, there were none of the currently available markers (and studies are in progress to find more advanced ones), but pathologists used the best diagnostic techniques of the time: it is worth remembering that the Pathology Department headed by Dr Betta at the time had quality certification, which he himself demanded, before the University required it. In addition, however, the instrumental findings were examined with the 'lens' of experience. At the November 22<sup>nd</sup> 2021 hearing, Pathologist Dr Donata Bellis had explained: 'If the only deciding factor were the staining of the slides using immunohistochemistry, a machine performing this function would suffice and a pathologist would not be necessary. A diagnosis is made and confirmed by evaluating and comparing several features: from the morphology of the tumour, to radiographic (x-ray, CT, PET), cytological and histological tests, with further verification by immuno-histo-chemistry if the experts deem it necessary '.

Professor Roncalli carried out the task entrusted to him by the defence scrupulously, considering 'several markers with high sensitivity and specificity, because there is no ideal marker present on all mesotheliomas'. As well as classing cases as 'certain', 'probable' and 'possible' cases, he also classed them according to the decade: cases between 1990 and 1999, between 2000 and 2009 and between 2010 and 2019. And he highlighted, 'greater diagnostic weaknesses' are found among cases in the first decade. The professor said, 'mesothelioma is a rare, unfamiliar disease, and therefore diagnosis is difficult'. He repeated that symptoms are not enough to establish that it is mesothelioma several times, and even evidence of a pleural effusion in an X-ray or CT scan can be something else. For example, he reported that a pleural effusion, in most cases, is due to simple pleurisy, i.e. an inflammatory disease of the pleura. His words: 'Fortunately, the mesothelium rarely undergoes a malignant transformation. Very often it is 'only' irritated by inflammatory phenomena (pleurisy)'.

Far from me to dispute the authoritative scientist's statements, I am only a journalist: Professor Roncalli's language is that of science and I have the utmost respect for it. But there is another language, on a no lesser plane, that of experience, of 'practice', let us say, which deserves equal consideration. To define mesothelioma, albeit in a technical sense, as an 'unfamiliar' disease causes a stir in Casale Monferrato and the surrounding area, where it is difficult to find a family that has not suffered deaths due to mesothelioma. And to say, then, that 'very often' pleural effusion is caused by pleurisy causes another shock. Those who read 'pleural effusion' on the X-ray report (small, modest, extensive, it matters little) have no illusions. How many candles lit in church praying, pleading, while waiting for a cytological or histological test, for a pitifully hoped for diagnosis of pleurisy! But how many times has that 'effusion' corresponded 'only' to pleurisy? It is difficult, in Casale and the surrounding area, to find any trace of it. Now, we are aware and, indeed, firmly agree, that emotions cannot guide judges. Facts are essential. And Professor Roncalli has done well to set out his objective assessments. Equally objective are those of the public

prosecution's anatomical pathologists. Just as objective - conscientiously and deontologically - must hopefully be the answers to the questions provided by all expert witnesses, of whatever party and on whatever subject. Then there is also the context - vital, emotional, affective - to be assessed and which weighs as much as the science. The context is the harmonious coexistence based on the regulation of relations between people. If this harmony is shaken by wrongdoing, a court of justice is the agreed forum to establish whose fault it was. In a trial, the purpose is to pursue justice. To compensate those who have been wronged. That is why objective science must be combined with living experience.

The Eternit Bis trial in Novara has to assess the whole picture of what happened in Casale. Not just any abstract one. The accounts of witnesses, victims' relatives or the victims themselves when they were alive are part of the picture, and are no less valid than the indisputable and essential findings of experts.

In the community of Casale, 392 deaths with those symptoms, those diagnoses at different times, those deaths are the consequence of exposure to asbestos that was different than elsewhere. Even in Milan and other large cities there was a 'natural' spread of asbestos fibre, but evidently in Casale, a small provincial town, there was more which is demonstrated by the number of people who developed the disease. The number of people who died. Like the 38-year-old young woman, who was born in the same year, 1976, in which the entrepreneur Schmidheiny had taken over the management of Eternit.

Of course, there are 'chameleon' tumours, which look like mesotheliomas and, instead, are other forms of cancer: but are we to believe that at Casale there was such a high concentration and repetition of 'false positives' on histological examination? And how would we explain it?

### **CROSS-EXAMINATION OF THREE EXPERT WITNESSES**

In the May the 30<sup>th</sup> hearing, the three defence expert witnesses who had previously spoken were cross-examined by Public prosecutor Gianfranco Colace and specifically, industrial hygienist Danilo Cottica, engineer Giuseppe Nano and Prof Pierluigi Nicotera, an expert in neurodegenerative diseases from the University of Bonn. In answering the PP's questions, Professor Nicotera reiterated the thesis of 'chromothripsis' that triggers mesothelioma; he insisted that 'a single exposure to asbestos is enough' to become ill and that 'the subsequent accumulation of exposure is not relevant for the formation of the tumour and its progression'. This is unproven as the PP's expert witnesses have shown time and time again. Regarding the difference between crocidolite (blue asbestos) and chrysotile (white asbestos) Prof Nicotera believes it is not possible to determine whether one acts any differently from the other. 'However, it is known that crocidolite is more dangerous than chrysotile,' PP Dr Colace noted. Professor Nicotera's reply: 'Epidemiological studies say so. From a molecular point of view we don't know'.

Engineer Nano was asked to confirm that the waste, fed into the Hazemag mill to re-enter the production cycle, had to be pre-treated, i.e. crushed. Yes, he replied, and the shredding had to be done under wet conditions. As far as we know, in the former Piemontese area, in Via Oggero, where the crushing of asbestos waste took place, the bulldozer was certainly moving back and forth under the open sky; and it may even have rained sometimes, but only occasionally, and at the behest of the weather. Prosecutor Colace asked Professor Cottica about the alternative fibres with which

Eternit intended to replace asbestos with; the expert witness stated that he was not aware that Eternit had concentrated studies in this direction, but that the company was simply 'intent on abandoning asbestos'. A question was also asked about the turning of the pipes, the resulting scraps of which formed the so-called 'dust', containing crocidolite. 'You said that not all pipes were dry-turned, but also wet-turned. With what equipment?' asked the PP. Answer: 'With rotating tools that scraped the pipe. "And in your opinion did that not cause friction? ". Answer: 'Probably'.

Last question: 'Do you not think that the work clothes, which were taken home and washed by the wives (among whom there is a high incidence of mesotheliomas), were a vehicle for asbestos fibres?' Answer: 'I believe that, yes, the clothing was a vehicle for asbestos'.

## **NEXT HEARING**

The next hearing in the Assize Court in Novara will be on Wednesday, 22 June, 2022. Defence expert witness Mauro Danna, an occupational physician, will be heard.

The US expert witness Prof Gary Marsh, a former professor at the University of Pittsburgh, will be heard - and cross-examined on July the 11<sup>th</sup> : he was expected on 16 May, but for technical reasons he was unable to leave New York.

## **CAVAGNOLO TRIAL**

On 14 July, the Turin Court of Appeal is expected to announce the appeal of the verdict on the Stephan Schmidheiny trial. The defendant was convicted in the lower court trial for two deaths in Cavagnolo. Chief Prosecutor, Dr Carlo Maria Pellicano asked for confirmation of the first degree sentence (four years). Defence lawyers Di Amato and Alleva insisted on acquittal. The Turin Court was presided over by Dr Flavia Nasi, assisted by Drs Maria Alvau and Ivana Pane.

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