

## **Eternit July the 11<sup>th</sup> Hearing**

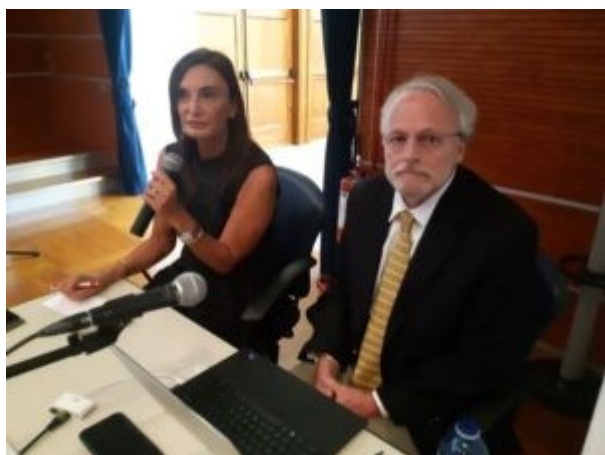
by

**Silvana Mossano**

### **U.S. fiber spread expert: misuse of asbestos in city is more responsible for diseases than the Eternit plant**

Professor Gary Marsh, an American, professor at the University of Pittsburgh and in Novara on Monday, July the 11<sup>th</sup> 2022, at the Eternit Bis trial as an expert witness for the defense, is an expert in biostatistics and epidemiology. He challenged the reports by the PP's (Public Prosecutor's) experts Prof Corrado Magnani and Dr Dario Mirabelli, Italian epidemiologists, authors of dozens scientific studies on asbestos exposure, most of which specifically on the Casale Monferrato cases.

The Eternit Bis trial is being heard before the Novara Assize Court called to judge Swiss businessman Stephan Schmidheiny for the (possibly willful) murder of 392 people, former workers at Eternit in Casale or simply residents of the town. They all died of mesothelioma, a cancer caused by asbestos, and the case is centered on Casale.



Prf Gary Marsh and translator

#### **THE EXPERT WITNESS'S TESTIMONY**

As is only fair, to assert himself as an expert witness, Prof Marsh introduced himself by listing some of his many positions, professor at the University of Pittsburgh till 2020 (and now Emeritus of biostatistics and epidemiology at that University), member of the American Society of Epidemiology, director of the Center for Occupational Biostatistics and Epidemiology, and principal scientific coordinator, to date, of the Cardno ChemRisk Society. "Is it a for-profit company?" inquired Prosecutor Gianfranco Colace. "Yes." Marsh started working there one day a week when he was still a full-time professor at Pittsburgh, then split his professional time in half between the university and the Cardno ChemRisk Company.

"And who are Carno ChemRisk's customers?" Marsh: "I'm usually approached by lawyers who know me as an epidemiologist." "Yes, but who do these lawyers work for? For corporations, private companies?" "Yes."



The Eternit trial, the professor explained, is the only one he has handled for an asbestos-manufacturing company and which has taken him twice outside the United States: in January 2011 for "Maxiprocesso 1" in Turin and now, in Novara, for "Bis."

In his career he has since engaged on other fronts. He was asked about this by Casale community's attorney Laura D'Amico: "Have you handled civil cases in America brought by women or their families who died from the use of talcum powder contaminated with asbestos?" Marsh: "Yes, talcum powder used in cosmetics." "And you, professor, have you worked on behalf of companies?" Marsh: "Yes, for manufacturers or those who marketed cosmetic products with talc." "And did you also engage in consulting with regard to chemicals, such as glyphosate used in a pesticide produced by the multinational corporation "Monsanto"? (the company, since 2016 owned by Bayer, has been ordered to pay millions of dollars in compensation, ed.). "Yes." Okay, he worked for Monsanto. "And also for the American Chemistry Council of Chemical Industries? And for the North American Association of Insulation Companies?" "Yes, and," the consultant added, "for large drug companies, but also on behalf of foundations and federal and government agencies. And he also cited a number of publications he has authored that have "undergone international scientific review," including "a 2003 paper on asbestos and fiberglass."



Lawyer D'Amico for the plaintiffs

Professor Marsh's examination and cross-examination took quite a long time, both for him to comment as he did not conduct his own study, but analyzed the work conducted and already explained by the PP's expert witnesses, and because it was necessary to translate him step by step. Not an easy task, dealing with technical arguments. For the assignment, a non professional interpreter was called in, a professor of Oncology of the University of Eastern Piedmont, Professor Alessandra Gennari, head of Oncology in Novara.

So, having made the presentation, Professor Marsh *critically reviewed* all the theses and, in some cases, even the working method of Prof Magnani and Dr Mirabelli.

### **CUMULATIVE EXPOSURE DOES NOT EXIST**

Defense counsel cited 3 studies by Magnani and Mirabelli showing the correlation between "cumulative exposure" to asbestos fibers and the *increased risk of developing pleural mesothelioma* (i.e., the more asbestos fiber one breathes in overall, the greater the risk of getting cancer). The studies supporting this thesis are many more than the 3 listed by the U.S. professor; the PP's consultants produced more than 20 studies that Prof Marsh had failed to consider (or had not referred to) because he disagrees with the cumulative dose thesis. In his view, "*what matters is the time from the first exposure(s) to the fiber.*" It is at that time, he states, that the onset of the cellular mutations that subsequently lead to tumor formation take place. All subsequent exposures, according to Marsh, no longer count; they are irrelevant.

### **ONLY THE FIRST EXPOSURE COUNTS**

The argument about the validity of "time from first exposure," on which the professor insisted by tenaciously opposing it to that of "cumulative exposure," was then transferred to the real-world context. PP Dr Gianfranco Colace asked for clarifications, to verify the theory set forth by Prof Marsh with the actual patterns of contamination which the Casale residents were exposed to. The town had Italy's oldest and largest Eternit plant that operated from 1907 to 1986.



PPs Dr Colace and Dr Compare with their expert witnesses

### **THE ETERNIT WORKERS**

The PP asked, "When do you place the first exposure for an Eternit worker?" Marsh: "Exposure starts on the first day of work in the factory." It doesn't matter, that is, if the person then works there another 20 years.

## **CASALE RESIDENTS**

The PP follows it with another question, "And what is the first exposure for a resident, non-worker to Eternit?" Marsh: "In this case you have to know where they live and see if there was any 'asbestos in the community' nearby. This is the expression used by the consultant to define the sites (numbering 1878, surveyed by Arpa (the Regional Environmental Agency) in the Casale District) where the presence of asbestos fiber from so-called "misuse" was found: dust used as attic insulation, or reinforcing and leveling courtyards and playgrounds, scrap used as street cement paving or paving in the squares, tarred felts, chicken coop canopies or flower bed boundaries, or the flat or corrugated sheet roofs, perhaps weathered over time, laid on buildings, sheds, garages.

Marsh focused on the spread of fibers from these sources, while overlooking over the spread of fibers from the factory at Ronzone, just over a kilometer from the city center. He strongly criticized expert witnesses Magnani and Mirabelli, who he said devoted almost exclusive attention to the plant as the primary source of asbestos spread. Instead, "these uses by the community in the urban area," he reiterated repeatedly, "are sources of fibers in the air that play a decisive role" in developing mesothelioma.

Returning to the prosecutor's question: for a resident who is not an Eternit worker, what then should be considered the first exposure? Marsh: "You have to see which is the first of the various dwellings where they were, in or near, one of these improper sources of asbestos. And that's the first exposure," the defense witness resolutely explained. "What if one is born in that house? Is this person contaminated from birth?" asked PP Colace. Let me make a point: given that the accepted mesothelioma latency is, on average, between 30 and 50 years, based on Marsh's conviction in Casale there should be a high number of deaths in their 30s, 40s, 50s. Contaminated and consigned from the earliest days of life to an inescapable fate, either because of a father who had a roof [insulated with dust – or, made from asbestos cement] or because of the neighbor's yard paving! Is that credible?

## **RESIDENT AND ETERNIT WORKER**

Third case considered: an Eternit worker who is also a resident of Casale, what is the first exposure to be considered? According to Marsh, the starting point is always the same: one has to see where the person lived; if there was presence of asbestos fiber in or around their home, that is the first significant exposure; it matters little whether they then worked for 5, 10 or more years at Eternit, perhaps in the AC pipe workshop.

Whatever the situation he was faced with, the American professor, strongly insisted on this thesis and rejected that of cumulative exposure.

## **DOUBT IS THEIR STRATEGY**

In fact, it is not surprising, because the professor's arguments are consistent with the defense's legitimate strategy which is to raise doubts in the court: if what counts is the time of the first

exposure, and if the general latency on average ranges between 30 and 50 years, then the exposures of the 392 named victims can have occurred before 1976, the year in which the defendant officially took over the management of Eternit (until 1986). That is the decade of interest for trial purposes. Therefore, if the first exposure counts and the subsequent ones do not, liabilities, at most, fall to the managers or directors who were there before and who have all died since.

## **MEN AND WOMEN**

The math, however, does not quite add up. PP Dr Colace continued, "If time from first exposure prevails over all, how come there are such different incidences of deaths between men and women? Does time from first exposure act differently depending on whether it's male or female?" Prof Marsh: "Women may have been exposed closest to their places residence, plus also an exposure due to their husbands coming home with overalls covered in asbestos dust and helping them undress...." Here, however, PP Colace points out the contradiction: if only the first exposure counts, the fact that the husbands came home daily with dirty overalls should have no impact whatsoever. Aren't those additional - and therefore ineffective, according to Marsh- doses from the asbestos covered overalls, day after day continuously?

The U.S. expert was then asked if he was aware of the crushing area for scrap manufactured goods from all the Italian Eternit plants, work that was done only in Casale. "Yes," he admitted, "I remember hearing about it years ago, but I haven't heard about it recently. Certainly there was this site, and some of the crushing product was taken home by the citizens...." PP Colace stopped him, "No, it wasn't; if that's your answer, I'll tell you that, no, it wasn't. Those scraps were being crushed, in the open air, with a bulldozer, and the shredded material was not intended for the residents to misuse it, but was brought back into the production cycle, mixed with raw materials in the Hazemag mill." With so many fibers in the air, around the clock, still in the 1976-1986 decade. Professor Marsh, of course, does not know Casale, "I've never been there, but I've seen a few photographs."

## **BLAME MISUSE**

Marsh spoke about Louisiana and Poland, citing the authors and the results of some studies concerning the spread of "home installations" of asbestos manufactured waste. He insists in his belief. Indeed, we do not know where all the asbestos was inappropriately placed, but we know that in Casale there was the plant a little more than a thousand meters from the cathedral, and the crushing area on the road between civilian residences (even closer to the center), and that there was a constant coming and going of uncovered trucks through the town streets, between houses, to transport bags of asbestos (Eternit raw material) or finished artifacts (pipes and sheets) to warehouses in the Piazza d'Armi or the train station. This was also true in the 1976-1986 decade.

Now, environmental exposures to the aforementioned "improper uses" have not been underestimated in Casale, indeed massive remediation and awareness campaigns have been launched on this front as well, but, as one of the plaintiffs' expert witnesses, Dr Gino Barbieri, had said on Jan. 17, "that of roofing (and improper uses) is a danger, not a risk." That is: the condition of danger implies the inherent potential to cause damage, while risk is the estimated probability of damage occurring. So: it is imperative to clean up these sites (under safe conditions) because, under certain conditions, they can become a hazard, but it comes a little hard to believe that it was more

dangerous to have lived near the asbestos roof of a chicken coop than to have worked 10 years at Eternit or to have repeatedly breathed in the fibers that circulated freely in and around the plant, in and around the crushing area, in and around the warehouses, along the streets, around the station. It will be up to the court to consider the opposing theses put forward by the prosecution and defense experts.

## **UPCOMING HEARINGS IN NOVARA**

The next date is Monday, July 18, for the cross-examination of two defense consultants who have already been heard: pathologist Prof Massimo Roncalli, from the Irccs Humanitas in Milan, and Prof Andrea D'Anna, professor of Chemical Factories at the University Federico II of Naples.

The president of the Assize Court, Dr Gianfranco Pezone, then set a date of Wednesday, Sept. 21, and one in October (yet to be specified) to complete defense experts. Two more hearings are scheduled in November and as many in December for plaintiffs' closing statements. Defense closing statements are likely to be scheduled after Christmas.



The Novara Court of Assizes

## **TURIN'S COURT of APPEAL VERDICT**

Sentencing by the Turin Court of Appeals has been postponed from July 14 to Nov. 29 for the appeal of defendant Stephan Schmidheiny's 2019 conviction in one of the Eternit Bis trials concerning two deaths in Cavagnolo. General Prosecutor Dr Carlo Maria Pellicano asked for confirmation of the trial court's verdict of four years for manslaughter. Defense attorneys Drs Astolfo Di Amato and Guido Carlo Alleva pressed for an acquittal. The Turin Court of Appeal is presided over by Dr Flavia Nasi, with Drs Maria Alvau and Ivana Pane.

## **NAPLES MOTIVATIONS OF THE VERDICT**

The grounds for the verdict of the Naples Court of Assizes (President Dr Concetta Cristiano and Associate Judge Maurizio Conte) against the Swiss businessman in the Eternit Bis trial for eight deaths in Bagnoli was published in recent days. The court has reduced the charge from murder with willful intent to manslaughter with willful negligence; as a result, six cases fell under the statute of

limitations; for one case there was an acquittal and for the remaining one, the defendant was sentenced to 3 years and 6 months imprisonment. Prosecutors Drs Anna Frasca and Giuliana Giuliano had asked that Schmidheiny's responsibility for willful murder warranted a sentence of 23 years and 11 months.



Defense Lawyers Allevi and Di Amato and defense expert witness Prof Canzio Romano (to be heard in September)

<https://www.silmos.it/esperto-usa-sulla-diffusione-di-fibre-gli-usi-impropri-di-amianto-in-citta-piu-colpevoli-della-fabbrica-eternit/>