

**September the 21<sup>st</sup> , 2022 Eternit bis Hearing**  
**By Silvana Mossano**

The Eternit Bis trial against Stephan Schmidheiny resumed in Novara on the 21<sup>st</sup> of September after the summer break. In the Court of Assizes, Schmidheiny has to answer for the voluntary murder (with possible malice) of 392 people from Casale Monferrato who died because of asbestos related diseases, when Eternit spread the substance throughout the town as well as in the plant. According to the prosecution – Prosecutors Dr Gianfranco Colace and Mariagiovanna Compare- it was a criminal behaviour and the entrepreneur is the last living owner.



**The Court and Jury**

In the first part of the hearing on Wednesday, September the 21st, the defence expert witnesses were cross-examined: Massimo Roncalli, a pathologist and former lecturer at the Irrcs [?] Humanitas in Milan, and Andrea D'Anna, professor of Chemical Plants at the University of Naples. Subsequently, experts Prof Canzio Romano and Claudio Colosio, appointed by defence counsel Lawyers Astolfo Di Amato and Guido Carlo Alleva, were called. There was only time for Prof Romano to speak and he did not finish; he will complete at the hearing on Monday, 24 October when his colleague will also be heard.

### **CALENDAR OF HEARINGS**

Chief Justice, Gianfranco Pezone, redefined the calendar: after 24 October, there will be hearings on the 21<sup>st</sup> of November (for Romano and Colosio's cross-examination) and on November the 28<sup>th</sup> (when the Public Prosecutors' closing statement will start), December the 12<sup>th</sup> (PPs conclusions) and on December the 19<sup>th</sup> (Casale plaintiffs' closing remarks). The defence lawyers will speak on the 16<sup>th</sup> and 30<sup>th</sup>, of January. One or two more hearings are likely to be needed will be needed for possible replies, before the Court withdraws to issue the verdict.

## PROFESSOR MASSIMO RONCALLI's CROSS-EXAMINATION

The defence expert witness repeated what he had set out in his report: '*The diagnosis of mesothelioma is very complex; to be sure, immunohistochemical tests are required*' which according to the precise recommendations shared by the scientific world, '*has been in use since 2007*'. And what happens to previous cases? This is the point: according to him, all victims who were diagnosed before such date are in a diagnostic limbo. This may seem a minor aspect; after all, what does it matter to know exactly what a loved one died of, who suffered and endured the pain and fear of having to detach themselves from life with dignity, even at a young age? Isn't the suffering determined by the loss rather than the cause of it? Not in the opinion of the defence witness. The certainty of a diagnosis corresponds to the moral certainty that all the best, clinically and humanly, had been attempted, pursued and adopted. Instilling uncertainty, on the other hand, throws those left behind into deep emotional disarray. So it goes, this is how it is in trials: the defendant is allowed to defend himself by raising doubts, without providing alternative explanations.



**Prof Roncalli**

In cross-examination, PP Dr Compare, referred to other diagnostic techniques, in addition to immunohistochemistry - especially for cases preceding the existence of this technique, although mesothelioma still killed even in the absence of the tests (alas!) widely used in the past, especially in hospitals where, unfortunately, the number of cases was (and is) frequent. 'CAT scans, for example...!', Professor Roncalli stopped her: 'The CT scan is the starting point, but not the finishing point. Every time I am called upon to make a diagnosis of mesothelioma, today I use immunohistochemistry'. The prosecutor insists: 'But there were certain diagnoses even before the advent of immunohistochemistry...'. Yes, admits the consultant, 'but science advances and today's markers are much more powerful and specific'. He shares his opinion with us: 'Fortunately, it gets better', but does not back down: 'This does not necessarily disprove the past'.

One wonders whether, in a few years' time, new markers, hopefully better ones, will disprove the current ones. So are we to assume that even today's diagnoses are inaccurate? Even unfounded? PP Dr Colace raised the question. In reviewing the diagnoses of 354 of the 392 victims mentioned in the indictment (all of whom, according to the prosecution, died of mesothelioma), Dr Roncalli re-classed them as follows: 40 per cent certain, 32 per cent probable, 28 per cent possible. The expert

witness agreed with the PP that most of those patients (*'flesh and blood people, with a life, people they loved...'* Dr Colace pointed out) were treated at the hospital in Casale which has a vast experience of mesotheliomas. *'Were these diagnoses incorrect? And were the treatments wrong? Are they cases of malpractice?'* the PP asked. And, then added *'what alternative diagnosis could have been made, in a patient with these symptoms?'* Roncalli hypothesized: *'Those signs are also there in other cancers, such as lung, breast, or urological...'*. The expert ventured to suggest: *perhaps 'the fact of being in Casale has perhaps led them to make that diagnosis...'*. Dr Colace shook his head and answered : *'Oh, [are you suggesting] the doctors at Casale went bit too far... or were they satisfied without investigating more in depth...'*. The PP did not stop at Casale but referred to the Humanitas [*a private hospital where the expert witness works TN*], the authoritative Rozzano Institute where Roncalli has been working for many years. *"of the 392, there is a case that was examined precisely at Humanitas in 2004. In re-examining the diagnoses, your report now placed among the non-certain mesotheliomas, that is, classified as 'probable'. At the time, professor, you diagnosed it as mesothelioma. Did you get it wrong at the Humanitas too?'*". Were other doctors as well as the Casale ones a little hasty in diagnosing?



**Lawyer Laura D'Amico**

Plaintiffs' Lawyer Laura D'Amico also had some doubts to clarify about the professor's report. In particular, she referred to a photo that Roncalli included attributing it to a case of epithelioid mesothelioma. When asked to confirm Prof Roncalli did *'Yes, of course it is'*. Well, to be truthful the lawyer summarily notes, that slide had been used years ago by Professor Mauro Papotti (expert witness for the plaintiffs in the same trial) for a lecture to his students. *'We might consider it a venial sin not to have quoted the source, it can happen. Only that Papotti had clearly used it to explain that it was an adenocarcinoma. Which one is right?'* The pathologist defended himself: *'They are not my images, I took them from the internet and I considered them reliable... The internet gives us a large choice of images... I was not formal, choosy... I did not know it was Papotti's...'*. *'Undoubtedly,'* comments Lawyer D'Amico, *'but why did you download them from the internet and not use one of his 2000 mesothelioma diagnoses that he claimed to have made at Humanitas during his career?'*

Yes: why?

*"We live in a fast-moving world,"* Professor Roncalli offered as a n explanation, *"and the internet is a quick source, in a quarter of an hour... If, on the other hand, I have to go and consult my cases, it takes me much longer... I also do it when I prepare lectures for my students..."*. However , Lawyer D'Amico insisted , *'Professor Papotti showed that image to his students back in 2005 as referring to*

*an adenocarcinoma... and today you attribute it to an epithelioid mesothelioma...'. "This is curious," Roncalli remarked. 'Yes, it is very curious,' agrees Lawyer D'Amico.*

## **CROSS-EXAMINATION of PROFESSOR ANDREA D'ANNA**

When heard, Professor D'Anna had set out a long list of Casalese companies that used asbestos. There was not only Eternit (the only one that used it massively as a raw material, it is fair to say). PP Colace asked where he had found this data for his report. "*Both from Renam (Mesothelioma Registry, ed.) and by looking on the net, where I found documentation on companies...*". No wonder there is a methodical insistence, even among scholars, of quick internet googling. The verb 'googling' (derived from the search engine's own name Google) is a new word now included in the Italian language Treccani Dictionary! So, by googling, Professor D'Anna retrieved data on companies that employed asbestos. But did he then check how much and how it was used in the various industries ? No, *'I had no other information'*.



**Prof D'Anna**

D'Anna had argued in his work, illustrated at the hearing on July the 18<sup>th</sup>, that the Eternit plant at Ronzone (and also the former *Piemontese area* where asbestos waste was crushed outdoors with no protection) were not the only sources of asbestos pollution in the city; the air, in his opinion, was similarly contaminated from all the city's sites where asbestos had been misused, particularly where dust had been used, both in the courtyards, sports fields and streets, and in the attics as an insulating material. Dust that, he reiterated at the hearing on September the 21<sup>st</sup>, did indeed come from Eternit (impossible to deny), but 'only until 1976, because from then on it was banned'. Banned since 1976: the year in which entrepreneur Schmidheiny took over the management of the company he inherited from his father. "*And where is that written?*" asked Prosecutor Colace. '*I read in a document from 1976 about the ban on distributing waste materials*'. Dr Colace pressed: '*In what document?*' The consultant insisted persuasively: '*There is a document in which it was written...*'. There is a document, the prosecutor resumed, '*I know it well, but that is not the content*'. So what? Professor D'Anna corrected himself, recalling, rather than a document, the testimony of one who had described it. So Professor D'Anna relied on the testimony of a citizen to state, in his technical work, that all Casale military sites (barracks, polygon, castle...) were heavily contaminated. In two cases, he accurately reported Arpa census data showing the presence of dust, but for all the others he based his conclusions on the words of '*an interviewee*'. He gave the name of a worker who said, generically, that asbestos '*was everywhere, and the Casale barracks had asbestos everywhere*'. The expert witness admitted that '*we had very little data to understand the quality of the air in Casale,*



*but those that do exist give the idea, he says, that 'in the centre of Casale asbestos pollution was rife'. Prof D'Anna referred to findings in studies by Marconi et al, by Chiappino et al. Dr Colace pointed out to him that the high peak (which was noted in the monitoring of the studies he cited) of airborne fibres in the area of the Magazzini Eternit, in Piazza d'Armi, is missing from his report. The consultant appeared surprised, 'I may have forgotten, yes, it is a high figure, I didn't really notice the figure...'. The prosecutor concluded: 'If it had been one of your students he would not have been awarded a good grade'. Prof D'Anna, however, did not change opinions: 'The pollution in the vicinity of Eternit came from the plant, but in the city centre it was caused by misuse'. The Prosecutor observed: 'Let me get this straight: the crushing at the former Piemontese site polluted as much as, or even less than, the dust fibres that come out of the small open holes... and I quote... between the tiles of a roof? The professor nodded in response. When it was pointed out that after the closure of the factory in 1986, subsequent monitoring showed an improvement in air quality, even though most of the remediation of attics and so on had not yet taken place (And many did not even know they had the dust). Professor D'Anna offered this explanation: 'More awareness had been gained by then. That is all.*

## **PROFESSOR CANZIO ROMANO**

Prof Canzio Romano is an expert in Occupational Medicine (associate professor at the University of Turin), in Diseases of the Respiratory System, as well as being an expert in Industrial Hygiene, and *'a bit of an epidemiologist and toxicologist'* (he was director of the School of Specialisation in Toxicology and Industrial Epidemiology at the University of Turin). He has extensive experience as a company doctor for many firms and, over 25/30 years, he has been a court expert witness *'always on behalf of the defence, never for the prosecution'*, he pointed out. He illustrated a first part of his complex and thorough report. Rather than constructing a thesis, Professor Romano Canzio meticulously devoted himself to dismantling the conclusions set out by prosecution expert witnesses Prof Corrado Magnani and Dr Dario Mirabelli.



**Prof Canzio Romano**

### **Use of epidemiological data**

His first objection was against *'the use of epidemiological data referring to the individual person'*, because, he said, *'epidemiological research quantifies the incidence of the disease on the population, not on the individual case'*. He added, *a population is inhomogeneous, consisting of individuals who are different from each other'*. Therefore, in Professor Romano's opinion, *'while epidemiology may have a general interest in changing the life habits of individuals'*, the results of

epidemiological investigations '*cannot be applied in terms of causality*', i.e. in his opinion they cannot explain the specific cause of the disease in the individual. Regarding a document in which the Italian Association of Epidemiology points to clinical studies supporting '*the applicability of epidemiological assessments to the individual person*', Prof Romano categorically stated : '*This is a mistake*'. He admitted that, in the scientific literature, '*the causal link between exposure to asbestos and mesothelioma has been more than sufficiently demonstrated, but in this trial,*' he insists, '*the object of the assessment is not only, and not so much, the identification of the causal factor to which the pathologies under examination can be traced, but, above all, the mode of exposure for each individual offended person, beyond reasonable doubt*. In other words: it must be proved that the source of the asbestos fibres, which caused the mesothelioma specifically in each of those persons, was definitely Eternit, of which Schmidheiny was head. It is enough for the defence to raise doubt.

### **Mesothelioma and grey areas**

Prof Canzio Romano reiterated that '*malignant mesothelioma remains to this day characterised by very large grey areas and eludes precise knowledge of its pathogenesis* (i.e. the biological mechanisms by which the disease develops): '*It is still largely not understood how asbestos acts, on which genes and with what time scale. And, once mesothelioma has been diagnosed, (...) it is not possible to trace back to when it began*. Hence the defence's conclusion is easy: Schmidheiny cannot be convicted if the origin of the disease occurred during the period when he was in charge of the company it cannot be established.

### **'Clearance' and additional doses**

Another aspect addressed by the expert witness: the so-called pulmonary 'clearance' (i.e. purification) of inhaled asbestos fibres deposited in the lung, that is the body's ability to get rid of toxic foreign bodies. According to the thesis of the Prosecutors' expert witnesses , the effectiveness of this capacity is cancelled out by continuity of exposure; that is, if a person continues to be exposed to asbestos, the elimination of the fibres is nullified by the introduction of new fibres and, therefore, the risk of mesothelioma also continues to increase. The question is: '*What do we really know about this clearance? Of its extent? Of its timing? Of its difference for different types of asbestos?*'. Prof Romano is sceptical: he quoted several studies, '*but, at most, they are hypotheses, estimates*'. In a word: '*Uncertainty*', he says. And he concludes by stating that it is '*unjustified*' to use 'the notion of *clearance*' to support the thesis that persistent exposure increases the risk of developing mesothelioma.

### **Remarks and Thoughts**

Professor Romano dissembled, precisely, but without explaining, or hypothesising, why so many victims of mesothelioma are from Casale and its surroundings and not in other cities, where asbestos artefacts were widely used. Roofs, pipes, furniture. The difference is that elsewhere they were not produced. And Professor Roncalli, for his part, after reviewing the 'slides' referring to most of the cases indicated in the indictment, stated that less than half were definitely mesotheliomas, while the others... well, probable... possible... perhaps they were something else. Here, let's say that the people of Casale find it difficult to believe that such a high number of diagnoses (and of deaths, concrete and painful, with those same characteristics) was the result of a collective folly of the local doctors who got a little carried away.



**Defence lawyers and PP Dr Colace in the background (standing)**

<https://www.silmos.it/eternit-bis-i-medici-casalesi-hanno-esagerato-con-le-diagnosi-di-mesotelioma/>