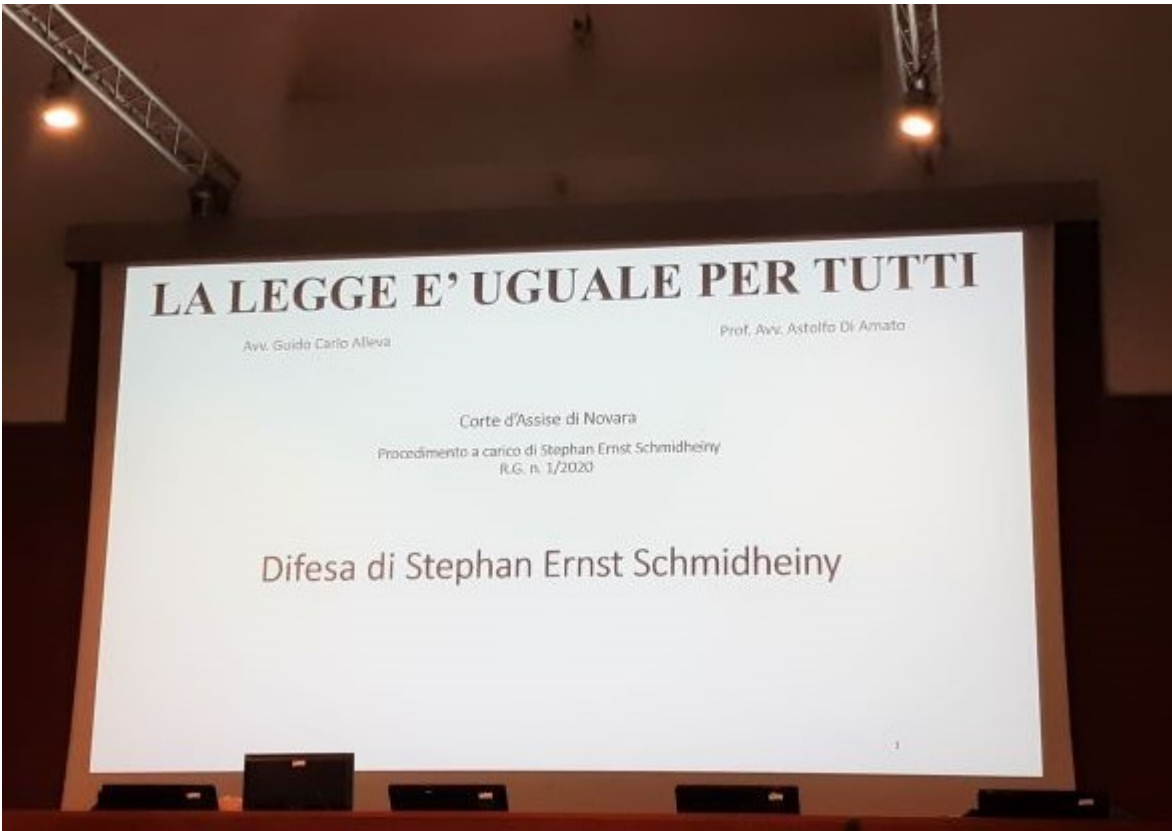


**Eternit Bis, the defence: 'Schmidheiny wanted to protect workers and the environment'.**



**The DEFENSE at the court of assize - lawyers overturn accusations: 'If there was dust, it was not the fault of the Swiss contractor, but of the plant managers who were supposed to be in charge of maintenance' - 'no compensation is**

**due'.**

**By Silvana Mossano**

*March the 10<sup>th</sup> , 2023 Eternit bis*

*"Stephan Schmidheiny never managed the Italian plants in person. He and the top managers of the Swiss group directed and coordinated, a task that belongs to the group's top management." Lawyer Astolfo Di Amato (defender of the Swiss businessman in the Eternit Bis trial in the Novara Court of Assizes) spells out his words at the conclusion of the first part of his argument, delivered at the hearing on Friday, March the 10<sup>th</sup>.*



Attorney Astolfo Di Amato, defence lawyer for Stephan Schmidheiny

The second part of the arguments will be illustrated by Guido Carlo Alleva on Wednesday, March the 29<sup>th</sup> .



On the left, layer Guido Carlo Alleva: will present the second part of the defense on March 29

Thus, Stephan Schmidheiny, as the "head of a group of companies that had sixty plants worldwide," made "*strategic choices*" such as: "*continue production while waiting to find suitable substitutes* (alternatives to asbestos, ed.), *inform the top management of the group companies of issues concerning health, provide the Italian plants with resources for safe asbestos processing, and create an apparatus to protect health and the environment*" with a liaison between the Neuss Science Centre ("*a highly qualified facility , futuristic at the time*") headed by Klaus Robock ("*a scientist who,*" the lawyer complains, "*has been unfairly mocked, while his specialized publications are still a cornerstone*") and technical bodies such as Copae and Sil charged with handling safety issues.

### **Determining Schmidheiny's role is one of the crucial features of the trial.**

If documents and witnesses, recalled by prosecutors Drs Gianfranco Colace and Mariagiovanna Compare, point out that in any case there was widespread dustiness in the factory (and outside), the defence counters: it's the fault of poor maintenance, which, however, was part of the daily management for which Italian managers (incidentally, now dead) were responsible.

Attorney Di Amato spoke for about four hours, arguing from a seated position over two hundred slides. But, to illustrate the premise, he stood respectfully: "*This*," he began in a hushed tone, "*is a trial about a great tragedy that is past and still ongoing. The Holocaust has even been evoked....*" He then echoed the words of PP Colace: "*The prosecutor stressed the great composure of the people of Casale. I can confirm they are wonderful people, with a very rich humanity.*" Therefore, "*we* (he uses the plural to indicate the shared position of the defendant and defence counsel) *are in this trial with sincere emotion and deep respect for the people of Casale.*"

How to link the tragedy (the indictment lists 392 names of people who died of mesothelioma) to the defendant?

Attorney Di Amato believes that "*the way to balance a tragedy is not to commit injustice by looking for a culprit at any cost and convicting an innocent person.*"

The conclusion to which the defence is pointing is only too clear: the acquittal of Stephan Schmidheiny, who was found innocent.

## WHO WAS SCHMIDHEINY

"What do *we intend to prove?*" The lawyer sits down, uses simple words mainly for the benefit of the members of the jury, and the slides begin to appear on the big screen.

***"Stephan Schmidheiny, in his role as head of the group, taking into account the knowledge of the time, acted in a prudent manner, not inspired by the logic of profit, and gave his group the message of protecting health and the environment."***

This is the exact opposite to the charges brought against the defendant by the prosecution and plaintiffs. The lawyer repeatedly points out that "*many beliefs held valid at the time of the events are no longer commonly accepted today, but we must overcome the temptation to read yesterday's facts with today's knowledge.*" Reasoning that, incidentally, says the writer, when addressing the issue of mesothelioma diagnoses is instead reversed by the very defence, when its consultants, failed to accept that certain diagnoses are not valid if they are not supported by the most current immunohistochemistry markers of, a recent diagnostic technique.

## PLANT CONDITIONS

Casale's was a "model plant," the defender stressed. He explained that "*as early as 1971* (a period when the Belgian presence was still predominant, as opposed to the Swiss one, ed.) *investments had been made in machinery and equipment, leading to a containment of asbestos exposure*"; those interventions, according to the defence, "*had a big influence on fibre abatement.*" Yet, Otmar Wey, technical director of the Eternit Group, spoke of a "catastrophic" situation. "Yes," Professor Di Amato explains, "*but only because in the Casale plant the fibres in the air were 2 or 3 times higher than the standard of the Swiss Group's plants.*" The lawyer retorts to the words of Prosecutor Colace (he had said that the situation " was and is catastrophic ") and witness Nicola Pondrano (who compared the factory to Dante's Inferno) by showing two photos for comparison: one is taken from

a "Luce" film and the other highlights the detail of a much more modern piece of machinery than the old pitchforks used to handle asbestos at the grinding wheels in the 1920s, 1930s. Not only that: Di Amato also recalls documents from public bodies, including one from the Labour Inspectorate that attests to the transformation of processing from dry to wet and with a closed cycle from 1974 onward. And he also mentions Carlo Castelli (first judicial commissioner for creditors, then receiver in the bankruptcy of *Holding Eternit spa*, while Alfio Lamanna was the receiver of *Industria Eternit Casale Monferrato spa*) who, in a report from '85, had described "the presence in the plant of certain suction systems," adding, however, that "it seems to be the maintenance that is lacking." Maintenance criticisms for which the defence rejects a direct responsibility of the defendant because "*he did not manage the Italian plants directly.*"

Di Amato mentioned other documents and expert reports to state, for example, stating that there were exhaust fans. According to calculations by engineer Giuseppe Nano (defence expert witness), they were absorbing "4,730 cubic meters of *air per minute*" inside the plant, capturing, that is, 4,730 cubic meters of air infected with asbestos fibres. So what? So, according to the defence argument, the fans placed on the walls of the factory would not have served to spew dust-impregnated air out of the work environment (since it was already being captured by the exhaust fans), but would have had exactly the opposite function: that is, they would have served "*to replace air,*" taking *air* from the outside to replace the inside air that the exhaust systems were sucking in. If the fans had not injected more air (from outside to inside), Di Amato says, the workers in the plant would not have been able to breathe.

## INVESTMENTS

The defence lawyer was very insistent on the "**significant investments**" made during the Swiss period, and particularly the one in Stephan Schmidheiny's charge, "*aimed at protecting the health of workers and the surrounding environment.*" "The issue of investments has been widely discussed. Di Amato repeatedly challenged the prosecutor's expert witness, Paolo Rivella, about the amount he reconstructed of the financial flows the Swiss Group allocated to the Italian plants, which was quite different from the higher amounts noted by defence experts. Even to take into account the smaller figure that emerged at the trial, that is, 33 billion liras in those years, Di Amato equates it to 700 million euros today. The lawyer also stigmatized the interpretations attributed by Rivella to the investments: for the prosecutor's expert witness only minimally used for safety; on the contrary, for the defence to a sufficient extent to achieve substantial dust abatements according to the parameters of the time. Exactly: **for the time**. He insists on the time factor. He dwells on the much-mentioned scientist Irving Selikoff who, in 1964 at the New York Academy of Sciences, made the call on the carcinogenicity of asbestos. "*But, years later, in 1979, his certainties were no longer so granitic: he admitted that there were still controversies in the scientific world.*" It is worth pointing out that Selikoff's doubts referred to by the defence counsel concerned chrysotile or white asbestos, not crocidolite (i.e., the more dangerous blue asbestos), which was used extensively at Eternit because it was used primarily in the production of piping. He also cited cohort studies of the 1980s that, based on the assessments of their consultants, did not produce entirely clear and comprehensive results on the real risks of asbestos. Certainty, Di Amato says, came only in 1997, "*at the Helsinki Consensus when the international scientific community reached agreement that asbestos could not be used safely.*" However, Di Amato admits, indeed points out, that indeed **alternative materials to asbestos were** being sought.

According to former Mayor Riccardo Coppo, who had heard it repeatedly, this prospect of alternative products was just a way to "tease us." In fact, in Italy Leo Mittelholzer, the last CEO, had been instructed in the 1980s to meet with competing small manufacturers to propose and agree on the divestment of asbestos by replacing it with other materials. It was to be done all together, however; those had not wanted to, because it was not convenient, and Eternit, not to be affected by competition, had continued as before in Italy. In Italy, therefore, no alternative materials, while in Eternit plants in other countries they had been adopted. With what results? Professor Di Amato evokes the testimony, given in May 2010 in the Eternit 1 maxi-trial, by engineer Silvano Benitti, a former Eternit executive: "There was a lot of scepticism. The slabs made with replacement material cracked after 7 or 8 years and had to be thrown away!" Well, but then... in the November 21 hearing, Claudio Colosio defence expert witness said worse things about the soundness of the asbestos slabs said even worse; verbatim: "*The deterioration of the roofing was already beginning a few months after installation!*"

Back to the hearing on Friday, March 10. Insisting on the importance of the knowledge of the time, the defender even quotes Aristotle: "*The Greek philosopher thought that the Earth was positioned and still at the centre of the Universe: that was what was known in his time. But that is not why we now say that Aristotle was ignorant!*" Certainly not. And, for Di Amato, Aristotle's example fits the context in which Stephan Schmidheiny was operating: in his view, based on what was known at the time, the Swiss entrepreneur did much more for safety purposes than what other competitors in the industry were doing.

He did a lot starting with Neuss.

## THE NEUSS CONFERENCE

It was mentioned many times at the trial because it is a turning point. Stephan Schmidhieny had recently taken the reins of the asbestos business, one of the entrepreneurial fields in which the powerful Swiss family operated in, worldwide. In June 1976 he summoned top-level executives, "*from all over the world,*" the defence attorney points out, "*not just the Italian ones*": this was to emphasize that his was a directing role, not a direct management role in individual plants.

### And what did SS say to Neuss?

Now, at the trial we heard and saw projected minutes and confidential correspondence in which Schmidheiny's words, spoken on that occasion, were of this tenor: "The current situation is a challenge that goes to the eternal existential problem: 'To be or not to be' (to be or not to be)." And again, "We must realize one thing: we can, indeed we must live with this problem." How? "Ensuring that the asbestos-cement industry can exist by means of an optimal organization of labour and environmental protection by following internal regulations." "These three days were decisive for the technical directors who were shocked (on learning from Schmidheiny himself about the very serious health repercussions of asbestos, ed.). The same thing must not happen to the workers." "We must react decisively (to the attacks against asbestos, ed.) and fight back with all our means." The defence attorney, however, proposes a different reconstruction of the defendant's conduct at the 1976 conference. He argues that Schmidheiny insisted on "*a change in the attitude and mentality of all employees, but especially of all senior management of the company*": that is, it was important that "*labor and environmental protection become as a matter of course as are production and*

*quality standards.*" The question is who should have been adequately informed of the dangers caused by asbestos, which, moreover, were illustrated by the contractor in Neuss in all their gravity, albeit according to the knowledge of the time? Who should have been made aware of the danger to change attitude and mentality from there on? Okay, the top managers, but from what emerged at the trial, the workers, that is, those first and directly exposed to asbestos, were not informed. Apart from the slip of paper, slipped once into their pay packets, on which it was written that smoking is bad for you (and **neither was it written that smoking, associated with asbestos, increases the risk of developing the disease**, which would have been useful and correct information). The communication strategy, following the "three days" in Neuss, was Auls 76, which was developed a few months later: it was a kind of handbook detailing different hypotheses of critical circumstances with the corresponding answers that had to be given depending on who asked questions about asbestos and its danger.

## THE AULS 76 HANDBOOK

For prosecutors, it was the "handbook of misinformation." The vision that the defendant proposes is quite different. Di Amato explains, meanwhile, that "*Auls 76 had no reference to proper management of the Italian plants. Instead, it was the instrument, in the defence's view, "so that all employees, all customers, the authorities, and the unions were informed in the most appropriate way and without preconceptions about the potential risks towards health, risks due to asbestos."* According to Di Amato, the purpose of Auls 76 was to "*hypothesize a series of abstract situations in which the managers of Eternit plants, scattered around the world, might find themselves as a result of allegations by private individuals, neighbours, and workers' requests in relation to the spread of asbestos dust and its dangerousness.*" Some examples of questions and answers ("in the abstract") contained in Auls 76 had been recalled by the plaintiff's attorney Maurizio Riverditi at the Feb. 27 hearing.

**EXAMPLE OF QUESTIONS& ANSWERS IN AULS 76: 1 "Why have you denied the existence of this danger until now? "*In fact, the hazard was not known until a few years ago*"; 2 "What do you do to protect your workers?", "*Special work clothes are made available (...), left in the factory, and the company undertakes to carry out the cleaning*"; 3 "What do you do to protect the family members of your workers?", "*There is no danger to the families*"; 4 "What about the danger to those who live near the factory?", "*Can the existence of such danger be absolutely ruled out*"; 5 "Why do you still use blue asbestos that is particularly harmful?", "*There is no scientific data to prove it*"; 6 "Wouldn't it be safer and more effective to ban asbestos-cement products?", "*It can certainly be considered a non-hazardous material*".**

For Professor Di Amato Auls 76 simply "*identifies guidelines that managers are asked to follow when they come across the situations described.*" Always *abstractly*, the defence counsel's explanation aimed at demonstrating a logical consistency with the proper role of the "group leadership". "In practice, one has to go and find that plant manager - "the *actual* manager" - who, finding himself in one of those hypothetical situations, dares to utter words different the ones in the handbook coming from the "group top management," aka Schmidheiny!

## TO SAY AND NOT TO SAY

On the strategies of concealment and mystification that prosecutors Colace and Compare (and plaintiffs' lawyers no less) accuse the defendant of, defence counsel draws a black line. *"No secrecy on the part of the present defendant. There was nothing to hide."* What about the letters between Schmidheiny and CEO Luigi Giannitrapani? All right, they were confidential, that's fine; but why did they arrive at a secret P.O. box in Genoa? *"A totally irrelevant circumstance,"* says Di Amato. The explanation is anchored in that moment in time. *"In Genoa (where the Italian Eternit spa was headquartered, ed.), there had been the kidnapping of Deputy Attorney General Mario Sossi and, precisely in 1976, the terrorist Mario Moretti had formed the Genoa Column of the Red Brigades. So, it is plausible that correspondence with the young son of the owner of a multinational group did not go through normal communication channels and that the very existence of Stephan Schmidheiny was kept confidential."*

What about the communication professional Guido Bellodi? What about the Handbook named after him: *Bellodi Handbook*? Bellodi *"had been hired in 1983 to avoid (in media reporting, ed.) a financial scandal due to the insolvency of the Eternit company that would later result in the 1986 bankruptcy."* [But according to Di Amato, *"the communications agency has been selling for over two decades (1983-2003?, ed.)* However, since Bellodi himself wrote to Schmidheiny congratulating himself on the results he had achieved with his work, perhaps it was **precisely the precious silence that was the fruit of the communication work on which they had agreed** and which the Milanese professional had "sold." Otherwise, how can one explain why Bellodi was paid generously and for many years by the Swiss top management? And the professional, by the way, also regularly settled the fees of the "antennas" hired in the territories of interest: not out of his own pocket, one imagines. The defence lawyer insisted, however, that there was no reason to hide anything because the entrepreneur's role as head of the Swiss Group was well known: as an example he projected the letter that Mayor Coppo wrote, in 1985, to Schmidheiny himself (complaining about the situation at the Casale plant and asking for an account of the promised relocation of the factory), and sent, for information, to the prefecture and the unions. Di Amato did not dwell on the contents of the letter; his purpose was to show that, in addition to the mayor, the prefect and the unions, at least by that time, must have been well aware of who Schmidheiny was: that is, the defence tends to reject the thesis of a communication activity aimed at artfully concealing the figure of the group's patron.

## MISUSE AND D'ANNA

As the prosecutors made ironic comments at some of the defence expert witnesses accusing them of "mixing logic and reality in a rather imaginative manner," lawyer Di Amato's response was not long in coming. There was no shortage of challenges to some of the prosecution's experts (including Dr Rivella, as well as Professors Dianzani & Magnani, Dr Mirabelli and others) and a staunch defence to the work done by his own consultant Andrea D'Anna, a professor at the University of Naples: *"For the first time, he has adequately highlighted the degree of pollution, with consequent danger to public health, caused by the very wide dissemination of asbestos (the defendant refers to the so-called improper uses: powder, first and foremost, ed.) that occurred in the seventy years prior to Stephan Schmidheniy's assumption of responsibility for Eternit."* D'Anna had been accused by the prosecutor of a *slip* when he pointed to a broken tile as the supposed passage of asbestos fibers; in fact, the tile had been broken on purpose by Arpa technicians to carry out sampling. *"No slip,"* replied Di Amato, *"if anything, it is proof that the roofs were not watertight. Effectively, if one smashes them, they no longer are."*

## WHOSE TRIAL IS BEING HELD?

*"Here there has been, on the part of the prosecution, more of a trial against 'Mr. Asbestos' or 'Mr. Eternit' rather than against Stephan Schmidheiny," the defence attorney says. He adds, "If one leaves prejudices aside, it should be noted that Schmidheiny, at the time 29 years old, with a law graduate and a cultural background influenced by the 1968 movement that he had experienced in Rome, approached the issue of health and asbestos in a way that was absolutely innovative and really cantered on the concern to protect workers and the environment."*

Allow me a comment at this point: *Assuming that that was SS's goal -- to protect workers and the environment -- and given that, for a variety of reasons, this has not been the case (so many, unfortunately, have died and so many, sadly, continue to fall ill), why, Mr. Schmidheiny, do you not commit yourself to remedy the ongoing dramatic drip of which asbestos is the cause? Do it now, Mr. Schmidheiny: by funding and leading-not just as a "group summit," but as an effective "direct manager"-a worldwide research effort so that the best scientists you choose will find the cure to end the tragedy that befalls this community (and beyond) made up of "wonderful people."*

## RESTRICTIONS

Finally, the defence rejected all indictments.

*"Regarding individuals and associations, it should be noted that the claims for damages refer to the violation of labour safety regulations resulting in the death of citizens and residents. This is a fact that has already been the subject of trial in the Eternit I trial and with respect to which the statute of limitations has already been consolidated." Moreover, in his opinion, "evidence of the existence of the claimed damages is lacking in the record."*

As for the claims of the unions and Inail, the workers' compensation agency, the statute of limitations applies as well. Lawyer D'Amato also invokes the statute of limitations for the claims made by the local authorities such as municipalities, provinces, regions, and the national government. In addition, *"with regards to environmental damage," the defence counsel observes, "the Arpa (the Regional Environmental Agency) records indicate that the reclamations concerned both asbestos-cement tiles and sites polluted by the misuse of asbestos-containing materials, a misuse," the professor insists, "that occurred almost exclusively in the period prior to Stephan Schmidheiny's. He concluded, therefore, that "it is not clear why the defendant should be called upon to compensate for damages resulting from conduct held in an earlier period or the costs necessary to remove roofs whose use was fully legitimate (until 1992) and when we don't know whether they were produced by Eternit."*

Professor Di Amato's observation will be considered by the Court; what can be said is that the plant abandoned in those conditions Lawyer Ester Gatti (for the Municipality of Casale) described as *"overflowing asbestos bags, broken glass..."*, ed.), the open crushing area, the canal and the little beach, the dump on the Po, and the warehouses remain of certain authorship. All this has been reclaimed at the financial, moral and health expense of the community.