

Monday February the 27th 2023 Eternit bis Hearing

By

S Mossano

The case of Casale Monferrato is unique, as is the suffering of the community, the agony of those who are diagnosed with mesothelioma and the lingering anxiety of those who fear that a cough or a suspected backache could turn into 'that' diagnosis. It is really a unique case. There is no other case comparable to the one experienced (and still being experienced) by the Casale community.

This was repeated by the plaintiff's lawyers at the hearing on Monday, 27 February at the Eternit Bis trial held in the Court of Assizes in Novara. A unique unparalleled case in the world, illustrated from different points of view but which reach the same conclusion, a shared conclusion: 'The defendant Stephan Schmidheiny is responsible for the voluntary murder (with possible malice) of the 392 people from Casale, listed in the indictment, who died of mesothelioma'. The lawyers for the plaintiffs (*parties civiles*) (victims' families, associations, bodies and trade unions) believe they have proved, with complex arguments, that those mesotheliomas were caused by the consciously unwise spread of asbestos, used as raw material in Eternit's production cycle. The Eternit where Stephan Schmidheiny was the last owner and manager.

THE PLAINTIFFS' ARGUMENTS

The arguments, which are in line with the conclusions of public prosecutors Drs Gianfranco Colace and Mariagiovanna Compare (for whom the defendant deserves a life sentence without the benefit of mitigating circumstances and with the aggravation of day solitary confinement), were divided and illustrated in several chapters.

- 1) Pollution inside the plant
- 2) Pollution outside the factory
- 3) The certainty of the 392 mesothelioma diagnoses
- 4) The causal link between asbestos and mesothelioma, the validity of the multistage theory and the anticipation of the disease, and the hierarchy of authority of scientific theses
- 5) Malice/willfulness
- 6) The award of damages to individuals, entities, associations and trade unions, as well as the criteria to qualify for compensation

POLLUTION IN THE PLANT

"The Assizes Court is called upon to judge a tragic affair that goes beyond the borders of Casale, as well as the national and international ones". Lawyer Laura D'Amico outlined the dramatic situation.

In front of her are the judges - president DR Gianfranco Pezone and the associate judge Dr Manuela Massino - and also the members of the jury, who have no specific legal skills. All together they will

have to understand and evaluate, to deliver a verdict that takes into account the defendant's conduct and the death of 392 people. Killed, according to the indictment.

A clear and precise reconstruction is necessary.

D'Amico began by introducing Stephan Schmidheiny: 'He is a law graduate, so he started with a legal career. In 1976, he was formally appointed to manage the family's asbestos companies around the world. His brother Thomas had the cement side. The two sectors are complementary'. But the young entrepreneur – under 30 years old at the time - was not inexperienced: 'He had already gained experience in South America and South Africa'. In 1976, when he took over the reins of Eternit (and he had already been on the board of directors since 1973), 'he was well acquainted with the asbestos sector and knew that, among other things, it had been well regulated since the 1950s by Presidential Decree 547 of 1955 and Presidential Decree 303 of 1965: splendid regulations on the life and health of workers'.

Those laws clearly set out the situation: primary provisions on installations, the secondary (if, after the former, a residual risk remains) with individual protections, the information type (to workers and others) and the specific health hazards. Lawyer D'Amico states, documents in hand, that at Eternit those regulations were largely disregarded. This is also demonstrated by the numerous prescriptions issued by the Labour Inspectorate, ignored for years by the company. "The dirt was widespread and dust hovered everywhere. And the masks? Dr Robock himself, Schmidheiny's trusted scientist, commented (and there is written evidence of his saying, ed.) that the type of masks provided were only for psychological purposes to keep the workers quiet." Yet, 'the 28-year-old 'boy' knew everything about asbestos. He was very well prepared at the Neuss conference, which he himself convened and chaired; he speaks to his top managers (it is all on record) about the dangers and pathologies. And he informs them so well and in such detail that they were shocked'. Verbatim. And noted in the minutes of the conference. "What does this person who knows everything do, the person who in Neuss shows great awareness of the risks of asbestos,? He invested billions of lire, yes, but for what purpose? That money was needed to keep production going,' says D'Amico. 'For example, in 1978 he bought the Balangero quarry...'. Why? Was it an investment for safety? No, says the lawyer: 'Sourcing asbestos at source saved a step and increased profits.

And for safety and health in the workplace, what did he do? "In '77," explains the lawyer, "he made a very serious decision: he started a new process to recover production waste not only from Casale, but also from all the other Eternit plants. All the waste arrived at Casale and was crushed, 24 hours a day, 'first within the perimeter of the factory, then, after the workers' complaints, the open-air shovel work was moved to the former Piedmontese area, almost overlooking, but outside the factory, more towards the city...'. "The filters, moreover, were inadequate to trap dust; there was no separation, in the departments, between more and less dangerous work; environmental measurements were approximate." And the canteen? "It was only established in 1979, before that workers ate a sandwich sitting on asbestos sacks". And the laundry? 'In 1984 they were still discussing whether to set it up...'. [...] D'Amico remembers Paolo Bernardi. 'His father, a former Eternit worker, died of mesothelioma, his brother, although not an employee, died of the same disease. When Paolo discovered he had asbestosis, he went to his superior to ask to be moved. He was a mild man, Bernardi, polite in manner and words. 'Look ,' he said, 'they found asbestosis. You

know, I have two small children... Could you move me to a less dusty ward?". And what was the reaction? "Bernardi," the doctor replied, "do you see the door?! Well, Paolo also died of mesothelioma'. Lawyer D'Amico is lapidary in her conclusion. She looks the judges in the face: 'You have proof not only of the substandard sanitary conditions in the plant, but also of the fact that the few interventions were ineffective and implemented with the logic of maximum savings.

POLLUTION OUTSIDE THE FACTORY

What happened outside the factory was illustrated by Lawyer Esther Gatti starting with the profile of the defendant: 'This is the story of a man who, concealing the knowledge he had, changed the history of the community of Casale Monferrato: he decided for us, keeping us in the dark about the knowledge he had. He only informed his top management, who were shocked, but we would have had the right to be shocked too in order to defend ourselves'. She speaks in the first person plural, because Esther Gatti is herself from Casale. As is the mayor Federico Riboldi, present at the hearing, together with Flavia Colombano, councillor of Ozzano (one of the other municipalities in the district, not immune from asbestos pollution, who are plaintiffs). "Schmidheiny took wicked decisions in the place of this community, keeping us in the dark from information that he knew and that would have changed our history. Because Casale would have had a different history 'if Schmidheiny had not decided something else for us!' Lawyer Gatti tells of the abandoned plant, 'full of bags of asbestos, broken windows. Those who took it upon themselves to reclaim it were the city of Casale: 'Mayor Riboldi came to explain how much reclamation has weighed on municipal budgets over the years (and still does): a choice had to be made between reclamation or, for example, building new schools...'. Priority has always been given to reclamation, 'it has been a fight against time to prevent more deaths than there already are. And, indeed, the city, through the municipal office entirely dedicated to this activity, had to invent hitherto unknown remediation systems, as well as creating an ad hoc landfill to accommodate the enormous quantity of dismantled asbestos artefacts. But Esther Gatti recalls with indignation, 'the defendant never offered to contribute: never. On the other hand,' explains the lawyer, 'ever since Neuss he has made it clear what his philosophy was: 'He who apologizes, accuses himself'. And Schmidheiny, to date, has still not apologised. It would be a major breakthrough if he finally took that step! Unlikely hope? Naive illusion? Perhaps so. Maybe? The lawyer goes on to say 'the fans, the cause of disruptive pollution: dust was thrown from inside to outside without filters'. And the open-air crushing in the former Piemontese area? And the warehouses in the Piazza d'Armi, with the trucks passing through the city without protection and covers, and 'every now and then the pipes would even fall to the ground on the way, falling apart'? And what about the overalls and work aprons that the workers wore as they left the factory, on their way home, or stopped at the shops in the nearby market in Piazza Castello? Those overalls were washed by wives and mothers: how many women were condemned to death because no proper laundry and changing rooms were set up in the factory? How many!'. Those in the courtroom seem to see the familiar names of so many women scrolling across an imaginary screen. And again: the lorries that, in uncovered skips, transported rubbish and waste from the Ronzone factory to the Bagna landfill beyond the bridge; and the sewage that came out of the canal behind the factory and ended up in the river, forming the famous *spiaggetta* (little beach), a destination for many of the people of Casale. The *spiaggetta*, remembers Esther Gatti, was one of the priorities of the reclamation: 12 thousand cubic metres of soil polluted with asbestos. Not to mention that those waters also flowed into the rice fields. Gatti recalls the 'wicked transfer of

powder to the population, kept in the dark about the serious danger it entailed, as well as the felts used in farmhouses or attics'. 'Eternit affected the fate of many citizens who only apparently had nothing to do with the factory, because the asbestos dust came out of the factory and entered the town centre, spreading into the streets and among the houses. No one was safe'.

CERTAINTY OF DIAGNOSIS

Are those 392 cases of mesothelioma certain diagnoses? 'They are: the scrupulous checks carried out and illustrated by the prosecution consultants (Drs Bellis, Mariani and formerly Betta), to which were added those of an international luminary such as Professor Papotti appointed by victims, are unexceptionable and leave no doubts,' says lawyer Giacomo Mattalia. However, the defence consultants did not accept all 392 cases and raised doubts about the reliability of the diagnoses. Why? The main reason: older diagnoses are sometimes not supported by verification with immunohistochemistry markers. And without immunohistochemistry, in the defence expert witnesses' opinion, those diagnoses might not have been mesotheliomas. And what would they have been? Metastases of other tumours, for example. 'Professor Roncalli the defence pathologist, , downgraded some cases from the level of certainty to those of possibility or probability,' Lawyer Mattalia recalls, 'because he maintains that immunohistochemistry cannot be bypassed. Unavoidable. 'But how! - Mattalia stigmatises, 'So the historic studies that scientist Chris Wagner published in 1960, in which he pointed out the carcinogenicity of asbestos, are to be thrown away because the diagnoses of mesothelioma (about thirty, in South Africa) on which they are based are to be considered fake because they are not supported by immunohistochemistry but 'only' documented histologically? The lawyer shakes his head: 'Technical development is important, but it does not disprove the past. All the more so, the lawyer points out, that 'here we are not talking about diagnoses in a theoretical way: we are talking about patients who were treated for mesothelioma and the therapies adopted were derived from that diagnosis, sometimes re-verified by different specialists. In none was there evidence of alternative pathologies: is it possible that no one realised that it was not mesothelioma?'. With regard to the certainty of the diagnosis, among other things, reference was made during the consultants' examination to a study (authors: Prof Barbieri, Prof Magnani, and Dr Mirabelli) in which 175 cases of mesothelioma (although diagnosed in life without immunohistochemistry) had been confirmed in subsequent autopsies. The work was published in the authoritative oncological journal '*Tumori*'.

CAUSAL LINK AND SCIENTIFIC AUTHORITY

Lawyer Laura Mara addressed the issue of the 'causal link': in order to pronounce a statement of liability against a defendant, it must be established that there is a cause-and-effect relationship between the conduct (of which he is accused) and the event (which occurred as a result of that conduct). In other words, as far as this trial is concerned, it must be proven that Stephan Schmidheiny's conduct caused the 392 asbestos-related deaths. As we have seen, science has entered the courtroom: hearing after hearing, there has been a fierce confrontation between the prosecution's consultants (and, in agreement, those of the civil parties) and the defence consultants, because science is a fundamental pivot to establish precisely the causal link. Do scientists always agree? Do they share the same theories? No they don't. So which scientific theories should judges adhere to when deciding the sentence? Laura Mara dwelt at length on the so-called 'theory of scientific causality' also known as the 'law of hedging'. According to this theory, 'now

predominantly accepted by jurisprudence, conduct is the cause of the event when, according to the best science and experience of the historical moment, the event is a certain or highly probable consequence of that conduct'. In other words, the question can be summarised as follows: would the event (in this case the deaths) have occurred or not occurred without that conduct (actions or omissions) of the defendant? Referring to the decade 1976-1986, in which Stephan Schmidheiny personally managed Eternit, did exposure to asbestos influence the deaths listed in the indictment? Yes, in the opinion of the prosecution's scientific consultants, who are convinced and support the multistage or additional dose thesis: that is, the initial exposures (and not necessarily the first) certainly have a significant weight in the cause of mesothelioma, but the subsequent additional exposures, which also influence the anticipation of death, also count. The defence consultants, on the other hand, cast doubt on this scientific theory and opposed another: that according to which it is the first dose that generates the disease, while subsequent ones are irrelevant.

How should the judges, who are not scientists, rule? Who to believe? 'Think about the real weight of the studies brought to your attention,' urged lawyer Mara, 'bearing in mind that the prosecutor's consultants are to be considered public officials as opposed to the parties' consultants who tend to pursue other purposes. The Court of Cassation says so! And take into account the third party nature of the consultant, checking for possible conflicts of interest'. And he added: 'Your task is to go and verify the thesis most widely accepted by the scientific community. This is a reminder that finds support in a considerable body of case law, which Laura Mara has given ample account of: 'Here you have played the game of insinuating doubts, as if the scientific community were split down the middle between one thesis and the other. The reliability of the experts must be verified. Not only that: it must be ascertained, for example, who financed certain studies brought to trial. And it must be assessed, instead, which studies have been shared and approved by the majority of the international scientific community in authoritative places, such as the Consensus Conferences or in qualified documents such as the Ministry's 'Health Notebook 2012' or the journal 'Epidemiology and Prevention'.

POSSIBLE INTENT

"This is a unique trial. It is a story in itself that I hope will never be repeated'. The tone of lawyer Maurizio Riverditi is firm. And what is this uniqueness? "Here we are celebrating the success of Schmidheiny's project: in 1976, he already knew what he was doing". It is the turn of lawyer Riverditi, an associate professor of criminal law at the University of Turin, to address the question of the possible intent contested against the defendant. The lawyer sets out in the introduction what, step by step, he then goes on to argue: 'Schmidheiny, aware of the distance in time that would necessarily have separated him from the consequences of the havoc he had wrought in Casale and the surrounding area, deliberately chose to pursue profit at the expense of people's health, trusting that the very passage of time and advancing age would have sheltered him from a verdict making him liable for his actions'. In other words, according to lawyer Riverditi, the Swiss entrepreneur was aware that he would escape liability precisely because of the long latency of the effects of his actions (mesothelioma manifests itself many years after exposure and, paradoxically, acts as a protective shield for the defendant). Prof Riverditi believes that he can 'affirm with reasonable certainty that Schmidheiny had envisaged and accepted the idea that the deaths (for which the trial is being held, ed.) constituted the price to be paid for the patrimonial advantage pursued'.

What did the young captain of industry who took the reins of Eternit know? "He had a mastery of the matter he governed, of the risks involved and the consequences they could cause. He made this clear to his senior staff at the Neuss conference in June 1976: 'The current situation is a challenge that touches on the eternal existential problem: "To be or not to be"'. Well, 'the defendant,' says lawyer Riverditi, 'lucidly and freely chose to "be", at any cost, even at the price of having to cause the death of those whom he had decided to continue to expose to the inhalation of asbestos dust'. How much and what did he know? For example, that in some countries, such as Sweden, but also England, there were stricter controls and regulations on asbestos than in Italy, where it could still be produced quietly; he knew about the [US] OSHA regulation on the spread of fibres, but, also advised by his scientist Robock, he was recalling the less restrictive German legislation; he knew about the carcinogenicity of asbestos and the alarm raised by the scientist Selikoff in 1964 in New York ('and in the 'secret room' at Eternit, a copy of a New York Times article writing about it was found'). He knew and clearly told his managers what he knew, but warned them: 'We must realise one thing: we can, indeed we must, live with this problem'. 'By denying the existence of scientific evidence, the existence of a real danger for the workers, as well as their families and the inhabitants of the areas surrounding the plant'. He minimised the rumours and 'told lies'. Lawyer Riverditi's reconstruction is precise: 'The defendant not only continued his conduct for a decade in full awareness of the repercussions it would have for the workers, their families and the population, but he did so by meticulously planning and weighing up the most suitable behavioural choices to conceal the evidence of the seriousness of his actions'. With what objective? "The pursuit of his own economic advantage". And so, as early as 1976, just a few months after Neuss, Auls 76, the 'disinformation manual' was drawn up, containing the lines of conduct given to managers: 'Do not panic. Try to have good contacts with the media. Learn your lesson'. The lesson, in fact, on what one should say, how one should respond: the choir must sing the same hymn, without blunders. "You do the mischief and tell lies to hide it," Riverditi chides, bringing some examples of pre-packaged questions & answers: 1 "Why have you denied the existence of this danger until now? "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 families of your workers?", "There is no danger for the families"; 4 "What about the danger for those who live near the factory? "5 "Why do you still use blue asbestos, which is particularly harmful?", "There is no scientific data to prove this"; 6 "Wouldn't it be safer and more effective to ban asbestos-cement products?", "It can certainly be considered a non-hazardous material". As if this was not enough: in 1984 Schmidheiny hired a public relations expert, Guido Bellodi, entrusting him with the task (which he certainly carried out until at least the year 2000) of crediting a blatantly fabricated version of what had been done and what would happen. The bankruptcy and closure of the plant in 1986 was already foreseen. The image had to be managed. Professor Riverditi evokes campaigns of lies, mystifications, contacts and secret communications through encrypted mailboxes, the containment of information at local level, the hiring of informers, or spies as you like. And he also recalls a precise fact, following the bankruptcy: 'On 19 January 1987, the receiver of Eternit spa received the sum of 9 and a half billion lire. An outburst of generosity towards the Casale community? Well, a cloud clouds this philanthropic motion and it is contained in a clause - recalled by Riverditi - that 'includes in the settlement "the consequences of the industrial process and the materials used in it"'. For the lawyer, this is a further demonstration of 'full awareness of the risks associated with the use of asbestos in the Casalese plant', so much so that he wanted to silence

them by paying the money. In other words: in exchange for the money offered, no mention should be made of what and how work was carried out at Eternit. 'The defendant did not hold back from unlawful conduct and accepted the occurrence of the event,' Professor Riverditi concludes. 'As happened at Auschwitz,' he adds, nodding his head slightly. "And then he escaped. The juxtaposition to that terrible page of history has a precedent. These were the words of the president of the Turin Court of Appeal, Alberto Oggé, who judged Schmidheiny (and reiterated his responsibility, with a conviction later quashed in the Court of Cassation not by acquitting him, but for a technicality linked to the statute of limitations) in the trial for wilful environmental disaster: "Not even at the Wannsee Conference [convened by Goering, ed.]was it said that the "final solution" consisted in the massacre of the Jews, but that the Holocaust was the objective, even if not declared, is well understood by the subsequent conduct of Hitler and his men". Lawyer Riverditi has no doubts about Schmidheiny's indictment: 'It is wilful murder'.

COMPENSATION

All the lawyers of the civil parties delivered their final briefs to the court with the relevant claims for compensation. Lawyer Alessandra Simone, of the Avvocatura dello Stato (representing the State) , stressed "the exceptional gravity of the facts that have deeply shaken the whole of Italy, with harmful effects of disproportionate dimensions". Lawyer Alberto Vella emphasised the role of the Province of Alessandria as plaintiff, as the ' for the community of Casale. The task of our Authority is to defend and protect the lives of its citizens: here, lives have been damaged and affected with the killing of hundreds of people'. Lawyer Laura D'Amico had outlined the objective benchmarks on which to base claims, both for individuals and for associations, organisations and entities. "It is an arduous task to translate into money what that suffering, that agony, is worth," she said. The word agony is a sharp blade. 'It is true, there is never money to pay for suffering', but 'it is also through compensation that the response of justice that Casale awaits passes, for the massacre it has suffered and which is not over. And it is a signal to the defendant: did he want to save so much? Then know that the death of those people also has an economic value. And the enormous effort made over the years by the trade unions and by Afeva (Associazione famigliari e vittime amianto - Association of Asbestos Victims and Families), which the lawyer represents, has a value: 'Afeva has done and continues to do a gigantic job: it has raised its voice against asbestos, it has made itself heard all over the world and insists, especially with young people'.

On Friday 3 March, Afeva's first historical president, Romana Blasotti Pavesi, the strenuous leader of this battle for justice, to whom asbestos took away her husband Mario, daughter Maria Rosa, sister Libera and some grandchildren, turns 94. Happy birthday, Romana!

Fifty million as a downpayment for damages: this is the amount that lawyer Esther Gatti is asking for from the municipality of Casale. 'Every citizen lives every day with the fear of falling ill with mesothelioma, a pathology with an inauspicious outcome. This never-ending pain is an incalculable damage for our municipality that represents this community'. Lawyer Gatti also defends the surrounding municipalities, because asbestos did not stop in the Casalese boundaries; they are: Ozzano, Rosignano, Cella Monte, Ponzano, Ticineto, Balzola, Morano, Pontestura, San Giorgio, Cereseto, and Valmacca.

She recalls Casalese stories marked by mesothelioma: she does not need to emphasise, because the reality is even starker. Those affected experience 'a suffering that will always accompany them'. The final appeal to the Court: 'In the sentence that you will pronounce in the name of the Italian people and in the name of that part of the Italian people constituted by the community of Casale, we ask that you recognise the drama that has marked this painful page'.

NEXT HEARINGS

The next hearings Friday, on March the 10th and Wednesday, March the 29th are for defence counsel Lawyers Astolfo Di Amato and Guido Carlo Alleva. Then there is likely to be an extended break before the replies, which will be followed by the judgment.

CAVAGNOLO APPEAL SENTENCE

In recent days the Turin Court of Appeal, reviewed the sentence of the Court of Turin in the Eternit Bis case involving two Cavagnolo victims: it confirmed the verdict for the asbestosis victim and instead acquitted the defendant Schmidheiny for the mesothelioma victim. Consequently, the sentence was also reduced from four years to one year and eight months. It will be interesting to understand the grounds for the verdict, when the motivations will be made public by mid-May (unless extended).

<https://www.silmos.it/i-legali-di-parte-civile-schmidheiny-sapeva-quello-che-stava-facendo-e-ha-deciso-il-destino-dei-casalesi/>