

## **Eternit Hearing February the 10<sup>th</sup> , 2023**

**by**

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"May the Assize Court declare the defendant Stephan Schmidheiny responsible for the crime of multiple and aggravated murders". The words of public prosecutor Gianfranco Colace, in the courtroom of the University of Novara where the Eternit Bis trial is being held, when it is close to 3.10pm on Friday February the 10<sup>th</sup>.

Judges, lawyers, victims' families, activists and journalists instinctively hold their breath. For most of the day, about fifty students and teachers from the Casale High Schools Balbo, Sobrero and Leardi were also present. Outside, they displayed placards, newspaper articles, clippings of their research, some written in large letters: 'Doubts doubts. Justice denied?'

We have reached the very last moments of the indictment that has seen prosecutors Gianfranco Colace and Mariagiovanna Compare speak in the last two hearings: the one on 30 January and the one in progress.

The court reporter concentrates on the computer keyboard to record the prosecutor's conclusions. It is always a tense moment when the final demands are made.

This, then, is a special trial. It is 'the' trial of the 392 Casale residents who died of mesothelioma caused by asbestos. What's more: it is the trial from which answers are expected not only for the 392 victims, but for everyone - and they are far more than those listed -, precisely all those who have died, and for those who are ill, and for those who will become ill in the future. It is the trial of a community that, unaware, suffered a very serious wrong and has been waiting for years to understand who committed that the crime.

Was it Stephan Schmidheiny who committed that crime? The answer to this question will be given by the Assize Court, presided over by Gianfranco Pezzone (with judge Manuela Massino and six jury), when it pronounces the verdict.

Now the time has come for the PP to make their requests and motivated them: they have carried out the investigations, gathered and brought documents, testimonies, scientific studies, set out 'the most significant clues' and believe that 'all the constituent elements of the crime of murder, with possible intent, have been proven'. PP Colace spell out the final words: the overall picture 'requires us to ask for life imprisonment, with day solitary confinement'.

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What is the evidence brought by the prosecutors?

Let us go back and review the main points .

In the first part of the indictment, discussed on Monday 30 January, the first two features were addressed: conduct (i.e. how asbestos was worked, used and treated at Casale) and the event (i.e. the death of the 392 people whose names, surnames and lives are listed in the indictment).

### **THE LAST TWO ISSUES**

Then, on Friday 10 February, public prosecutor Mariagiovanna Compare addressed the issue of the causal link (how did exposure to asbestos in the decade 1976-1986, when the defendant managed the Italian Eternit company, affect those deaths) and public prosecutor Gianfranco Colace addressed the difficult issue of

possible intent: it occurs when a defendant represents the concrete possibility that an event will occur (in this case, deaths from mesothelioma) and, despite full awareness, acts in a way that will produce that event.

This is the theoretical definition that must be proved by evidence.

## POSSIBLE INTENT, NOT INTENTIONAL

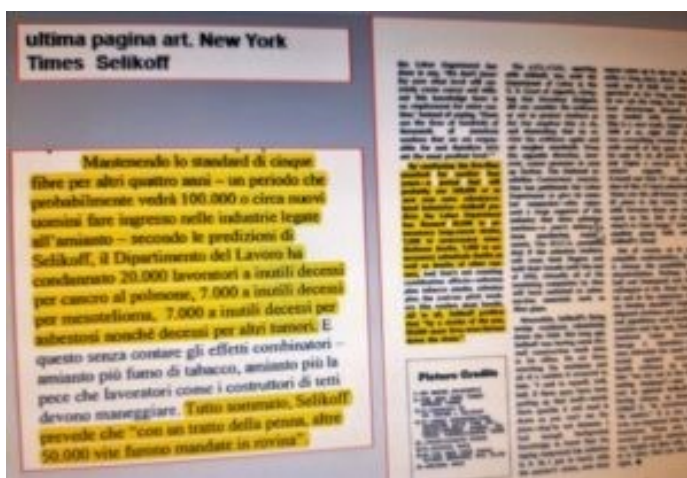
The public prosecutor cleared the field of the hypothesis of 'intentional malice': 'I rule out that the defendant wanted to kill a whole series of people: he did not know the names and number of people who would die, this did not'. And yet 'he portrayed the risk to himself and accepted that what happened would happen. He made a conscious decision and acted; and he did so for profit and by an insidious means, from which he tried to defend himself even after the cessation of business'.

## The ETERNIT OWNERS

The Schmidheiny's 'owned Eternit, a 'royal' and powerful lineage, starting with their grandfather and then with Stephan's father'. And 'Eternit belonged to the worldwide cartel of asbestos producers and extractors': Colace proved this with the copious amount of documents and pausing to comment on a significant part of them. "In the early 1970s," he explains, "the Schmidheiny family literally shared the world of asbestos with the Belgian Emsens family (with whom Baron Louis de Cartier, now deceased, co-defendant of Stephan Schmidheiny in the maxi-trial for intentional disaster in Turin).

Tangible evidence of this are the minutes, correspondence, notes and memos concerning Saiac (the 'cartel' set up in 1929, of which first the grandfather, then the father of the defendant was a member), and later the Tour d'Horizon, 'in which decisions were discussed and taken on asbestos procurement, competition control, price policy and, from a certain moment onwards, also on the health issue linked to the spread of the fibre; these are secret meetings, because cartels were forbidden!

Traces remained and were found. For example, the annotation of 'a meeting on 13 August 1971 in the villa of Max Schmidheiny, Stephan's father, in Herrburg, Switzerland, where the big entrepreneurs of the sector who were gathered there "realised that the asbestos industry was going through a critical phase because the problems of carcinogenicity were beginning to become public knowledge'. We remember the cry of alarm by the scientist Irving Selikoff in 1964, at the International Symposium of the New York Academy of Sciences. And the newspapers talk about it (the pm recalls an article in the New York Times on 21 January 1973 that worried the top management of the asbestos industry; they had received a copy in February 1973).



"By maintaining the five-fiber standard for another four years (...) according to Selikoff's predictions, the Labor Department has condemned 20,000 workers to unnecessary deaths from lung cancer, 7,000 to unnecessary deaths from mesothelioma, 7,000 to unnecessary deaths from asbestosis as well as deaths from other cancers. And this is without counting the combinatorial effects - asbestos plus tobacco smoke (...). All in all, Selikoff predicted that with a stroke of the pen another fifty thousand lives were sent to ruin'.

Colace stigmatises: 'Damn! They were worried... In 1973 they knew, therefore, that asbestos was carcinogenic, they spoke of it with apprehension, they were aware that in the Casale plant 'there was a high level of pollution in most of the departments': they wrote this themselves, in an internal communication of February 1973. And they also speak of external pollution, because there are the results of some studies that record dispersions even outside the plants. They know that in Great Britain the legislation is stricter than elsewhere, and even in Sweden they are stricter, Schmidheiny wonders whether it is not a case of taking that government to court to loosen the bans. For Italy, on the other hand, they are less alarmed at the moment because the 'situation is calmer', they write'.

And faced with this picture, that is, faced with the knowledge that asbestos causes cancer, what are they planning to do? 'Minimise information on toxicity,' is Colace's answer. They never asked themselves: 'Are people really dying? If so, perhaps it is not worth stopping using asbestos?' Never, never such a concern'.

In addition to Saiac, the Tour d'Horizon, and the meeting in the Swiss villa in Herrburg, there is the Neuss conference in 1976, convened and chaired by Stephan Schmidheiny (who sat on Eternit's board of directors from 1975, taking over in the following year). Everything is known in Neuss; there is a report summarising what was communicated in those meetings to the top Eternit executives: 'In the 1960s, the first research was carried out in the United States and Canada and the existence of a carcinogenic effect of asbestos fibres was ascertained', but, the Swiss entrepreneur head of Eternit recommends, 'it is definitely important that we do not fall into forms of panic'. He is aware that he has said some heavy things: 'These three days were decisive for the technical directors who were shocked. The same thing must not happen to the workers'.

## LITERATURE

And so an 'arsenal of literature' was prepared, entrusting its direction to the scientist Robock, 'not independent, but paid by Schmidheiny', who, for example, 'suggests referring to German legislation that is less restrictive on fibre limits than Osha (the American agency that deals with safety at work)'. The arsenal of literature includes a pamphlet entitled 'Asbestos: the population is not at risk'.

The propaganda promotes 'a strategy that,' explains the prosecutor, 'the asbestos cartel mystifyingly defines as 'safe use of asbestos'. As if to put a brake on it: "calm down, calm down, before saying that asbestos is bad for you!". The 'safe use of asbestos' becomes a slogan that Schmidheiny himself in Neuss reiterates: 'Asbestos can be dangerous if it is used wrongly, but if it is used in the right way...".

'In short,' summarised Colace, 'one chooses to continue using this deadly material'. With what precautions? Again in a Neuss report it is written: 'We must react decisively (to the attacks against asbestos, ed.) and fight with all our means'. With what deployment of resources? Colace read an excerpt out loud; it is the boss who speaks and gives precise indications as to what is to be done: 'Ensure that the asbestos-cement industry can exist by means of an optimal organisation of labour and environmental protection (optimal = maximum protection with minimum economic means)'.  
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And, thus, the 'arsenal of literature' also includes 'Auls 76' (the number accompanying the acronym refers to the year 1976, in which it was drafted and circulated), which the public prosecutor defines as 'the manual of disinformation'. It contains precise directives on how to respond to those - workers, workers' relatives, residents near the plant, trade unionists, journalists, local politicians - who ask questions on the health issue,

i.e. the risk of falling ill from asbestos. What are the indications contained in Auls 76? Colace literally quotes a few passages: 'Asbestos as such is not dangerous; only if fine-grained dust visible under a microscope is breathed in (...) can lung diseases occur (...)'. And again: 'There is no danger for families. And for those living around the factory is there any danger? "No,' is the answer to be given, drawn from Auls 76, 'if there is a low emission and limited to the discharge of filters, the existence of a danger for those living near the factory can be absolutely excluded.

## **FORBIDDEN TO SAY ASBESTOS**

And in addition to Saiac, and in addition to Tour d'Horizon, and in addition to Neuss, there is Aia (Amiantus International Association), another forum of asbestos entrepreneurs. In '77, as the safety issue was becoming increasingly urgent pressing, there was a discussion about the requirement to indicate on the label that asbestos was hazardous to health. In the UK, the authorities lobby. Manufacturers are very perplexed, because they fear 'having to include the word "cancer" in the wording'. They spoke about it at length: writing 'cancer' would frighten workers; therefore, they agree to indicate 'only that improper use of the product could be harmful to health'. It is in this direction that it is decided to move, to contain alarmism that is insidious to the industry.

Some time later, in England, where regulations are more stringent, the company Turner & Newall had the words 'breathing asbestos dust can cause cancer and other lethal diseases' printed on the bags leaving its factories. The reaction? In 1980, the stick came from a leading exponent of the global cartel, Etienne van der Rest, one of the directors of Belgian Eternit. In a letter addressed to the head of Turner & Newall, he expresses his grave disappointment: 'You will understand,' he writes, 'how disappointed I am' with the wording printed on the English sacks. What is the concern of von der Rest and the 'cartel'? That 'the EEC (as the EU was then called) might decide to adopt (everywhere) that label and perhaps press for a label with a criss-cross skull or some other symbol related to cancer risk'. In short, this risk must not be spoken of. 'He says he is disappointed,' PP Colace concluded. Disappointed? No way?".

The propaganda machine had also included a more refined 'updating' of terminology. From Switzerland, in 1977, the managing director of Eternit Italia, Luigi Giannitrapani (with whom Stephan Schmidheiny kept a very confidential correspondence - 'Confidential' -, with a poste restante in a post box in Genoa), received 'an invitation to replace the wording "asbestos-cement products" with "fibre-cement products" in communications, articles, brochures, conferences'. These are provisions of the chief, taken from an excerpt of that confidential correspondence shown by the public prosecutor.

Basically, you make asbestos disappear by simply deleting the word. On the other hand, Colace emphasised, 'Giannitrapani is a halved managing director, dispossessed of decision-making powers. He only gave the workers the information that smoking is bad for them, but is silent about its real danger in synergy with asbestos'.

Although many defensive strategies had been put in place to camouflage and minimise the risks, the danger of asbestos explodes, it is no longer containable. 'Schmidhieny was unable to manage an inexorable fate: asbestos collapsed on the health issue,' says Colace. But, he adds, since 'he was in the international control room even before 1976 (just as his presence was incisive and widespread in individual companies), he could not stand up and say that it had to stop!'

## **ALTERNATIVE MATERIALS?**

There had been an attempt to replace asbestos with alternative materials. The task of testing the ground had been entrusted to another managing director, the last one in Italy, Leo Mittelholzer; he himself spoke about it at the maxi-trial for malicious disaster a little over a decade ago in Turin. What had Mittelholzer done? He

had contacted the small competing Italian manufacturers, about ten of them, inviting them to abandon the fibre and to divert production to alternative fibres, as Eternit had already done in its plants in other countries. Eternit would also make its technology available. But the 'little guys' replied that it was not convenient for them, they might as well exploit the situation until asbestos was banned (this happened in 1992). And Eternit? In order not to lose its large share of the market, it continued to produce in Italy as before.

By making investments in safety, to limit the danger of which it was aware?

According to the public prosecutor (and based on the documentation reconstructed by the prosecutor's consultants, and contested by those of the defence) very little was invested in safety. The defence says: 75 billion lire; and another company document shows a figure of just over 33 billion. Colace, although uncertain about the amounts, replied that these were inflows of money to cover losses, while specifically for safety he shows a summary sheet with individual expenditure items and a total of just under 4 billion lire (3,943,700,000) for all the Italian plants over ten years.

## **BANKRUPTCY**

In 1986, Eternit went bankrupt and the factory was abandoned. On the big screen in the courtroom, the internal images of the factory at the sudden cessation of activity run. "A catastrophic situation was described by the Eternit managers themselves in the early 1970s and little less than catastrophic is what remains in the second half of the 1980s. It is there to be seen, look at these pictures," urged the prosecutor.





Some photographs taken at the abandoned Eternit plant in Casale after it closed in 1986

### **AFTER THE CLOSURE**

"What did the defendant do after 1986? He continued for 20 years to spend millions to hide," says the prosecutor. He refers to the Milanese professional, public relations manager Guido Bellodi, 'paid handsomely to camouflage Schmidheiny behind anonymous companies'.

[The so-called 'Bellodi Manual' with the orders to protect the boss. Who 'was not even to be named; an acronym was used, STS, to indicate the unmentionable'.

And again: 'Bellodi activated a monitoring network, even paying spies'. Colace recalls, in particular, the name of the Casale woman (it had emerged at the maxi-trial of Turin) who had 'infiltrated the Afeva (Associazione familiari vittime amianto - Association of asbestos victims) and the trade unions to acquire information and make periodic reports to Bellodi'. The public prosecutor read one at random, dated 6 October 1993: 'The "fuse" is being lit on the data concerning the epidemiological investigation and atmospheric sampling. The trade unions are concerned and are trying to raise public awareness of the seriousness of the problem'. The infiltration activity continues for years. Another document, with 'Subject: MONITOR', sent to Bellodi by the same Casale source, is dated 2 February 2000: 'As usual, I am enclosing a copy of the articles published last December in local and other newspapers...'. And another: 'The Casale MP Angelo Muzio (of the Italian Communist Party) officially announced the disbursement of funding for mesothelioma research arranged by the Ministry of Health'.

### **AFTER THE BANKRUPTCY**

The Swiss companies headed by Schmidheiny had been suggest reconverting the abandoned Casale factory so that it would not become 'a bulky "asbestos monument"', but the proposal was shelved for economic reasons. The Swiss entrepreneur never again laid a hand in that factory, which had been abandoned and stuffed with asbestos. When several mayors from Casale who had testified at the maxi-trial in Turin were repeatedly asked: "Has Schmidheiny or one of his representatives ever turned up offering to contribute to the reclamation?", the unanimous answer was: "Never".

'Nine and a half billion lire arrived from Switzerland to the bankruptcy receivership in exchange for waiving all legal action,' Colace explains.

The bankruptcy, at the time, cashed in those nine and a half billion lire and 'the Swiss,' comments the prosecutor, 'thought at the time that it was the last possible disbursement for Eternit.

### **THE TRIALS**

There was a trial in Casale, against some executives (and not the owner), and then the Eternit 1 maxi-trial in Turin for malicious environmental disaster (in this case, for the first time, against the owners of Eternit, with convictions in the first two levels of judgment and acquittal for the statute of limitations in Cassation) and, again, the Eternit Bis trial, divided into several strands of which, in the Assize in Novara, the heaviest one is being celebrated for 392 people from Casale and Monferrato who died from asbestos.

### **EACH EXPOSURE INCREASED THE RISK**

"Those 392 deaths, which are too many, are in any case only a part of the victims caused by asbestos in Casale," remarks public prosecutor Mariagiovanna Compare.

She recalls numerous scientific studies according to which 'the risk of mesothelioma already exists at very low exposures to asbestos fibres, but is all the greater the higher the cumulative exposure: the multiple circumstances of exposure are not in competition with each other, but on the contrary have all made a synergic contribution to the manifestation of mesothelioma'.

He also insisted on the fact that 'as exposure increases, the average time of onset of the disease increases. So you die sooner.

He showed the data: 'In the Casale Monferrato area there are numbers ten times higher than in the rest of Piedmont, which is also one of the regions most affected by mesothelioma'.

He turns over the last sheet of paper on which he has noted the various passages of the indictment and pronounces the last sentence: 'We believe, with a high degree of rational credibility, that the 392 cases are attributable to the defendant Stephan Schmidheiny'. There is nothing more to be said. But he repeats: 'Yes, they are attributable to him'.

### **DEMANDS**

Having reconstructed the entire evidentiary picture, the requested sentence is 'life imprisonment with daytime isolation'.

**DAYTIME ISOLATION:** This is a kind of 'aggravated life imprisonment': an accessory penalty imposed on a person who has committed a crime for which life imprisonment is not considered appropriate.

Prosecutor Colace had not yet finished.

After minutely sketching the personality of the entrepreneur Schmidheiny, he also spent a few words on the defendant Schmidheiny, who, in his opinion, 'does not deserve the award of mitigating circumstances'.

The prosecutor did not believe that the defendant can be credited with 'the offer of compensation he had made to the victims' families, motivated by humanitarian principles and philanthropic convictions'; when was this made? "In 2008, that is, when he had been served with the notice of closure of the investigation of the maxi disaster trial in which he was a defendant. Never before had the feeling of solidarity been expressed'.

The public prosecutor also did not consider the defendant deserving of extenuating circumstances, 'neither generic nor of any other kind', also in view of his 'trial behaviour; quite simply: he has not been found guilty'.

Stephan Schmidheiny chose to be absent, represented by his lawyers Astolfo Di Amato and Guido Carlo Alleva. It is his right to do so, certainly, although it must be said that Schmidheiny himself would perhaps have gained the most from appearing in court: for himself, for his human and ethical redemption to which he seems to aspire, given his efforts to show himself to the world as a philanthropist. Of course, presenting

himself is a step that requires courage, but it would also be (he can still do it, before the end of the trial) a demonstration of dignity.

According to the prosecutor, however, the defendant 'showed indifference to this trial, he did not intend to make his opinion heard'. Not in the courtroom, at least. Outside, yes. Colace recalled: 'In January, a couple of years ago, he gave an interview in which he hurled accusations at the Italian justice system.

And, then, there is the website - [www.stephanschmidheiny.com](http://www.stephanschmidheiny.com) -, where his life and business experience is recounted a little differently from what the documents show.

It says, on the site, that 'in the mid-1970s' on the question of the risks of asbestos for human health 'we were still far from a technical and scientific consensus'.

"No, no, he's not telling the truth!" chides Colace.

The site continues: "Nevertheless, in 1976 Stephan Schmidheiny, who had just taken office, decided to start an innovation programme called 'New Technology' (New Technology) for the development of asbestos-free products. Under his aegis, the Swiss Eternit group also initiated huge investments in the protection of workers' health and safety, as well as in the improvement of production facilities'.

'No, this was not the case in Italy, and we have seen and proven it, with all those safety measures imposed and disregarded,' urges the public prosecutor.

The website also reads: 'In 1981, Stephan Schmidheiny publicly announced the abandonment of asbestos processing and by 1984, a large part of Eternit's products were already being manufactured without asbestos'.

"But when, but how! - reacts PP Colace - So what was done in Casale until 1986? I take this as a confession by the defendant!'

## **THE HEARINGS CONTINUES**

The civil parties' lawyers will speak at the hearing on Monday, 27 February (Monday the 20<sup>th</sup> cancelled).

The defense lawyers' speeches are scheduled for Friday the 10<sup>th</sup> of March and Wednesday 29<sup>th</sup> of March 2023