

Mr Schmidheiny, don't you think the time has come to personally, directly and financially, endeavour to research and find a treatment for mesothelioma? For you it would be a serious philanthropic choice and a formidable image boost. For thousands of people around the world it would be healing and life!

ETERNIT BIS APPEAL OF ASSIZES HEARING

27 NOVEMBER 2024

by

Silvana Mossano

On Wednesday 27 November, the third hearing of the Eternit bis trial in the 'Giuseppe Casalbore' courtroom of the Turin Court of Justice, the third hearing of the Eternit Bis trial took place before the Court of Appeal, chaired by Cristina Domaneschi, assisted by Eleonora Gallino and the jury (aka popular judges). In the morning, the lawyers for the plaintiffs (*parties civiles*) spoke. In the afternoon, the defence lawyers for Stephan Schmidheiny, sentenced by the Court of Assizes to 12 years' imprisonment for aggravated manslaughter began their presentations. The Court of Novara also applied the statute of limitations for 199 cases and acquitted him in 46 cases. The sentence was appealed both by the Public Prosecution (which also requested the renewal of the trial, the Assize Court has not yet ruled) and by the Defence.

The next hearing is scheduled for Wednesday, 4 December: defence counsels Astolfo Di Amato and Guido Carlo Alleva will speak and will continue Wednesday, 11 December. A hearing is also scheduled for 18 December, but the president will consider whether to keep it or set new dates in January.

SUMMARY

A - THE Plaintiffs LAWYERS (*parties civiles* that is institutions, associations, trade unions and individual citizens) reiterated their request for recognition of the crime of intentional murder (with possible intent) for all the 392 victims indicated in the indictment and contest the acquittals referred to 46 cases of death.

1- The intent and wilfulness due to the following:

- at the time of the facts (i.e. during the decade when Stephan Schmidheiny was head of Eternit)
- after the facts (i.e. during the period following the closure of the plant)
- personal history of the defendant

2 – They stated the validity of the diagnoses, which are the result of the expert opinion of several specialists (pathologists, radiologists, cancer specialists, thoracic surgeons etc)

3 - The position of the authorities (Municipality, Province, Region, central Government)

B - The DEFENSE addressed, or rather reiterated, some preliminary issues.

4 - Translation of the documents into the defendant's language

5 - Access to 'slides

6 - *Ne bis in idem* (akin to double jeopardy)

7 - The decision of the Turin magistrate for the first hearing: its impact trial

C - FLASH MOB OUTSIDE THE COURT: 'In the name of the polluted people'.

D - 'ENVIRONMENTALIST OF THE YEAR': Luisa Minazzi Award, ceremony in Casale

DETAILED INSIGHTS

A - PLAINTIFFS

1 – wilfulness or intent

'I know that it is not easy to imagine convicting a global 'white-collar criminal for wilful offence, as is the case. This is yet another reason why this trial is one of a kind: it is unique because of the number of victims, the amount of material that the prosecution has patiently gathered (documents, testimonies, consultant reports) for the original trial, the Eternit 1 Maxi-trial where the defendant was charged with intentional environmental disaster, while in the present trial he is charged with murder: 392 people. 392 dead'. Thus began lawyer Laura D'Amico, one of the plaintiff's lawyers in all the Eternit trials.



Lawyer Laura D'Amico

The defendant's conduct in the decade between 1976 and 1986, when he was head of Eternit, was analysed, and what he did afterwards, all indicators of his personality were identified to help understand the reason for his decisions

Who is, who was Stephan Schmidheiny? *'A brilliant student and then a law graduate who, therefore, had knowledge of the rules,'* explained D'Amico. *A scholar,'* added Maurizio Riverditi another plaintiff's lawyer, *'who, moreover, sat at international tables where it is well known why and in which countries asbestos was banned or most opposed'*. Again: *'He grew up in a family,'* D'Amico continued, *'of millionaires... or maybe that's not enough..., billionaires? Well, anyway, in*

a family in which, even as a boy, he heard about the internationally managed industrial world at the dinner table'. In Italy, he controlled two thirds of the asbestos market.

He had great knowledge, and experience in the field: he had been sales manager of the family companies and had worked his way up through the ranks in Eternit plants in Latin America, before 1976, since he had been left the asbestos sector, while his brother Thomas was to inherit the cement side of the business. In June 1976, Stephan Schmidheiny convened, *'that famous, horrible conference in Neuss'*, as Lawyer Riverditi defined it, where, after illustrating to the group's top executives what was scientifically known about asbestos, its harmfulness and the cancer it causes, he *'touches on the eternal existential dilemma, the Shakespearean question "To be or not to be"'*. To exist or not to exist. To continue producing with asbestos (preventing the risks from being known to workers and populations because this would lead to the closure of factories) or to cease the activity using the fibre.



Lawyer Maurizio Riverditi

Schmidheiny decided to continue. And this is where the question raised by the plaintiff's lawyer: *'Can we ask the judges to assess the death of all those people as intentional? 'We are used to reasoning on the most frequent case of murder: I take a weapon, shoot a person and kill him. But there are other ways of defining wilful murder (i.e. voluntary,): if I have the doubt that my behaviour, whatever it may be, can cause death (or more deaths) and I go ahead anyway, even in this case there is intent. It doesn't matter,'* he pointed out, *"that one by one, those 392 people died due to his intentional, behaviour, he caused the death of human beings, little did their identity matter"*.

The question remains as to how one proves wilful intent, that is, *'getting inside the defendant's head to know whether Schmidheiny acted with the doubt of causing those deaths?'*

Hence the meticulous analysis of the conduct. Not forgetting that until 1992 the use of asbestos was permitted by law, a fact that no one denies -adds lawyer D'Amico. However, even before there were precise rules to follow. *'For example, Presidential Decree 547 of 1955 and Presidential Decree 303 of 1956, which revolved around three central figures: the employer, the worker and what was then called the factory doctor. It was a perfect system back in the 1950s,'* And what did it involve? *'The*

employer had to pay the utmost attention to protective measures; in this specific case, primary protection from asbestos dust, and imposed the abatement, at source, of the risk. Only when, by resorting to the most efficient technological instruments, the greatest possible dust abatement results had been achieved, in the event of the slightest residual dustiness, was recourse made to 'subsidiary means', e.g. masks'. Those adopted from a certain point onwards at Eternit, according to Dr Robock (Schmidheiny's scientist), were not protective but had 'only a psychological effect', i.e. the illusion of protection. Moreover, 'the employer had to inform the workers adequately about the risks they were exposed to and how to prevent them. Not generic information! Not the bulletin tucked into the pay slip in which the danger of smoking is recalled, in bold type, while keeping silent or minimising the real danger of its association with asbestos dust! And again, those regulations of over sixty years ago provided for 'the obligation of health prevention: the employer,' explained D'Amico, 'had to keep the workers' health conditions under control at all times. What's more: 'The Supreme Court has always been categorical: in a company, either precise measures are taken to eliminate the risk or the plant had to close. You cannot put workers 'lives at risk'. Lawyer D'Amico also recalled the Neuss conference, which was considered a crucial event in the defendant's conduct: 'Schmidheiny, as early as 1976, fully explained all the damaging potential and risks of asbestos, with forecasts of an increase in mesotheliomas, cited studies conducted in the 1950s and 1960s, and concluded by emphasising that care was needed when working with asbestos'. Did he mean that he would strive to interpret those regulations of Presidential Decree 547 and 303 to the highest level? 'Not at all. False words. A few months later, Auls 76 was produced, the handbook issued from above with the indication of all the behaviours to be kept in order to avoid spreading knowledge of those risks'. Laura D'Amico asked a question: 'Was it inexperience, foolishness (... he was careless...), negligence (... he did not feel like it...), that is, the elements that characterise manslaughter, that he acted? No! Schmidheiny knew'.

A reminder was made of the '266 reports by the Labour Inspectorate of which 67 for excessive dusts: every report,' the lawyer recalled, 'was a violation of the law and every violation of the law is a crime. We are at unimaginable levels!'.

And after that? After Eternit went bankrupt in 1986 (an event secretly decided and pre-ordained as early as 1983 in Zurich, because the material was gradually losing appeal) what was the Swiss entrepreneur's conduct? It was analysed in order to obtain evidence on the subjective element of the defendant: 'If the subsequent conduct is one of mystification and concealment artfully sought (with the use of the PR Firm Guido Bellodi), then that subsequent conduct has a significance for assessing also the conduct held between 1976 and 1986 (the period covered by the Eternit Bis trial, ed.)'. 'Fearing that the consequences of his conduct during the long period of the decade might be discovered, he took steps to take cover so that those events would not be linked to him,' Lawyer Riverditi pointed out. 'After about a year and a half that the plant was closed, he put up money for a settlement with the workers'. With what constraints? 'The settlement clearly stated: that there would be an end to any legal action not only arising from the damage suffered, but also from the production methods and the material used. In other words: 'He left the plant in disastrous conditions, he consciously abandoned it to its fate, but, so that it could not be traced back to him, he paid someone to take the fall: Schmidheiny ran and hid. Well, the 'after' says a lot about the behaviour of the 'before'!'. The conclusion of the plaintiff's lawyer is that 'the defendant made a

rational choice: he was confronted with that doubt, he saw but despite this, he acted by trying to hide facts. But,' he concluded confidently, ' what he failed to hide was the truth!

2 - The validity of the diagnoses

Lawyer Giacomo Mattalia started from the 'guidelines' on the mesothelioma diagnoses, drawn up by experts and accredited by the scientific literature, which, however, '*are inevitably subject to time and methods have been updated*'. Guidelines are not imposed, but '*recommended*', leaving room for the pathologist's assessment. This leads us to immunohistochemistry, '*a technique introduced since the early 1990s*', and progressively refined with new markers. '*And what about before that? – wonders Mattalia – Were diagnoses not performed before then? Or were they incorrect? And, therefore, is everything that was performed previously appear not to be valid? Including, for example, Wagner's and Selikoff's studies?*' He spoke of the way in which a diagnosis of mesothelioma is made at hospital level, the result of a careful multidisciplinary approach. [...]



Lawyer Giacomo Mattalia

Oncologists, radiologists, pathologists, chest surgeons and considering all the available examinations: X-rays, slides, biopsy'. With what aim? '*To formulate an accurate diagnosis for therapeutic purposes. And why is a diagnosis considered valid when treating a person, being questioned in court today!*'. A similar consideration was expressed by public prosecutor Dr Mariagiovanna Compare. In the trial, the 392 diagnoses, which were the result of investigations first carried out in hospitals, were still reviewed and updated by the prosecutor's consultants, to arrive at assessments of certainty or probability, but '*the probability was assessed in the overall clinical picture. It did not stop at an answer of academic uncertainty!*' '*as Casalesi (people from Casale) we would be happy if those diagnoses had been wrong, if they had not been mesotheliomas,*' said lawyer Esther Gatti, '*because there would have been more hope of living!*

3 - The position of the authorities

The Municipality of Casale Monferrato. The Court had sentenced the defendant to pay an interim payment of EUR 50 million. Which Schmidheiny's lawyers dispute and did not pay.

The defendant's behaviour stigmatised by lawyer Laura D'Amico, also concerns compensation to victims: *'The Novara Assize Court sentenced him to pay interim compensation to the plaintiffs that are immediately enforceable, i.e. the sentenced defendant was obliged to pay them. Well, he did not do so, he did not even comply with the Court's ruling!'* Lawyer Gatti resumed: *'Of the 392 victims in the trial, 330 are community cases: people who never set foot in the plant but became ill and died of mesothelioma caused by asbestos'*. This was possible because *'the plant and the city territory being so closely intertwined*.



lawyer Esther Gatti

According to the PPs and plaintiffs' lawyers, it was precisely the employer's failure to take precautions that had serious repercussions outside the plant. Among the various arguments, one is that dusty work overalls were not washed inside the plant but taken home, lacking a laundry or even lockers inside to separate civilian clothes from work clothes: *'A terrible practice,'* commented Lawyer Gatti, *'that sent many women and workers' families to their death!* As for the dust, *'we heard that with the advent of Schmidheiny there had been a warning against the use of asbestos outside. There is no documentary evidence of this warning, but were checks carried out to ensure that the order was respected, Did anyone inform the city authorities so that they could have controlled and prevented? No, the authorities knew nothing'*. And when the plant and other sites were abandoned in that state, *'the municipality of Casale had to make up for the defendant's inactivity by reclaiming the sites to try to safeguard human lives'*.

As for the other municipalities in the surrounding area, Esther Gatti recalled *'the risk of exposure highlighted by the prosecutor's consultants up to a radius of 11 kilometres'*. Alberto Vella, the lawyer for the Province of Alessandria, recalled the body's mission: *'To promote people's quality of life. Here even lives have been taken, that is, the primary good that the Province must safeguard has been compromised'*.

Lawyer Alessandro Mattioda for the Region Piedmont. asked the Assize Court to confirm the



Lawyer Alberto Vella

lower court's sentence to compensate the entity for monetary and moral damages, to be settled in separate proceedings. The State Lawyers, on behalf of the Council of Ministers: '*Citizens died while the defendant got rich. If this is not suffering for the territory that the State must protect!*'.

B - THE DEFENCE

4 - The transcript

Advocate Alleva reiterated an issue already addressed elsewhere among the preliminary issues: the correct translation of the acts into the language of the defendant, which, in the defence's opinion, was not respected. '*The [German] translation of the indictment is incomprehensible and even incomplete in an important part that concerns intent*'.

5 - Access to the slides

The defence lawyer pointed out the difficulties of access to the slides in which the victims' biological tissue samples are kept, slides that, "*in this trial,*" Alleva stressed, "*represent the body of the crime and are indispensable for carrying out the activity of checking the diagnosis, especially since, according to some scientists, mesothelioma is a "chameleon tumour", i.e. it imitates other tumours. It was therefore right and indispensable to be able to carry out an accurate anatomopathological examination in the light of the innovative diagnostic criteria*". A task that the defence entrusted to pathologist Dr Massimo Roncalli. The incidental and lengthy access time, however, later remedied by the Court of First Instance, represented, according to Alleva, '*a violation of the right of defence*'.

6 - Ne bis in idem (Double Jeopardy)

A defendant cannot be tried twice for the same fact. Lawyer Di Amato intervened on the issue of 'ne bis in idem', referring to the cases of victims that are listed among the 392 of this trial but were already contained in the indictment of the Eternit 1 Maxi-trial. The Constitutional Court bypassed the issue by ruling it out. However '*that decision does not convince us,*' said the defence. '*Just think what the principle of European freedom of movement would be if each judge gave his/her own*

interpretation of bis in idem! Hence the request to ‘submit the matter to the Court of Justice of the European Union, otherwise there is no respect for the law,’ he warned.

7 - The decision of the Turin Judge of the First hearing (aka GUP)



From left, lawyer Guido Carlo Alleva and lawyer Astolfo Di Amato: the defendant's defence attorneys presented some preliminary issues. They will continue on Wednesday 4 and 11 December

‘The defendant was entitled to be tried by a judge in Vercelli and instead he was tried by the Assize Court in Novara’, meaning that he should have been tried for manslaughter and not voluntary manslaughter (with possible intent). What is the meaning of this statement by the defendant Lawyer Di Amato? It goes back to the preliminary hearing in Turin, at the end of which Judge Federica Bompieri downgraded the crime from intentional murder (as requested by the Prosecution) to manslaughter with aggravated circumstances; as a result, the file, which concerned victims from Casale, Cavagnolo, Bagnoli and Rubiera dell'Emilia, was divided into four trials according to the area. The Casale case ended up in Vercelli, which (like the Naples public PP for the Bagnoli deaths) carried out further investigations and renewed the request for wilful murder, a request granted, sending the Swiss entrepreneur to trial in the Novara Assize Court). According to defence Lawyer Di Amato, he could not do so: *‘In our opinion, the Vercelli prosecutor was precluded from modifying the charge, disregarding the decision of a previous judge, i.e. the gup of Turin, which had ruled that the crime should be redefined as manslaughter’*. Defence lawyer Di Amato disagreed and insisted: *‘The public prosecutor had two options: he could ask for the case to be dismissed or he had to maintain the same approach as Judge Bompieri.*

C - FLASH MOB OUTSIDE THE COURT



Flash Mob 'In the name of the polluted people' on Wednesday 27 November in Turin, in front of the Palace of Justice, with the participation of Afeva activists from Casale

'Ecogiustizia subito: in nome del popolo inquinato' (*Justice now: in the name of the polluted people*): this is the title of the national campaign promoted by Acli, Agesci, Arci, Azione Cattolica Italiana, Legambiente and Libera, joined by Afeva, aimed at rekindling attention on places symbolic of pollution and environmental injustice. The launch of the campaign focused on the 'Casale case', with two events taking place on Wednesday 29 November. In the morning, a flash mob in front of the Courts in Turin, where the third hearing of the Eternit Bis trial in the Court of Appeal was underway: a group of activists from the 'Associazione famigliari e vittime amianto' (Association of Asbestos Victims and Families), including several relatives of mesothelioma victims, took part in the demonstration. In the afternoon, a public meeting was held in Casale's Tartara Hall, at the end of which a Community Pact for Ecological Justice in the 'Sin (Site of National Interest) of Casale Monferrato' was signed, containing proposals to urge the interventions that are still lacking, to verify their implementation and to encourage the active participation of the populations in the projects for the ecological transition of the territory. Pietro Comba, one of Italy's leading experts on the health impacts of asbestos, proposed a twinning between Casale Monferrato and Sibatè, a town of 38,000 inhabitants, about thirty kilometres from Bogotá, in Columbia, where an international study has identified an area with a high incidence of asbestos pollution and pleural mesothelioma patients.

D - 'ENVIRONMENTALIST OF THE YEAR

The audience in the Council Chamber of Palazzo Sangiorgio in Casale



Luisa Minazzi award ceremony

Where Cecilia Di Lieto, from Radio Popolare, who was awarded the '*Luisa Minazzi - Environmentalist of the Year*' Award, in its 15th edition. The award ceremony - promoted by

Legambiente and the magazine La Nuova Ecologia together with the organising committee, which unites numerous Casale-based organisations, the Piedmont Po River Po Protected Areas Management Authority and the Monferrato municipality - was held on Friday 29 November in the Council Chamber of Palazzo Sangiorgio, in Casale Monferrato. In many years of passionate work at Radio Popolare, Cecilia Di Lieto has dealt with numerous issues. Since 2014, from Monday to Friday she has been on air, from 12.45 to 13.15, with the radio programme 'Consider the armadillo', which talks about the fascinating and complex relationship between humans and other animals. Di Lieto is also the author of the book 'Me l'ha detto l'armadillo. Stories of passion between us and other animals', Altreconomia editore.

The Award, which since 2012 has been named after Luisa Minazzi, who died in 2010 of mesothelioma at the age of just 57, after a life spent in defence of the environment as an educational director, activist and local councillor, to valorise people committed to the wellbeing of the community, the dissemination of the environmental message, business innovation and safeguarding the territory. This 15th edition of the Award bears the names of Luisa Minazzi and of Romana Blasotti Pavesi, the past president of the Afeva association for thirty years, who died in September at the age of 95.

In addition to Cecilia Di Leo, the other witnesses of the 15th edition of the Environmentalist of the Year Award were: Acs, which works in various countries for sustainable development, the abatement of inequalities and gender equity and which has devised GazaWeb to activate stable communication systems in Gaza; Fiorella Belpoggi, biologist, emeritus scientific director of the Ramazzini Institute in Bologna founded in 1987 by Professor Maltoni, a world-famous oncologist; Giovanni Chimienti, marine biologist, researcher in Ecology at the University of Bari and National Geographic explorer; Igor D'India, a video-maker specialised in adventure expeditions and environmental issues who has documented the presence of large quantities of waste on the seabed of the Strait of Messina; Giuseppe Giovi Monteleone, mayor of Carini (Palermo) who has campaigned for the demolition of unauthorised villas, which has triggered the redevelopment of the coastal strip.

<https://www.silmos.it/eternit-bis-le-parti-civili-limputato-sapeva-ha-mistificato-e-ha-cercato-di-nascondersi/>