

"Mr. Stephan Schmidheiny, with great honesty your lawyer said that the Casale community is exemplary and morally upright, has suffered and is suffering. Mr. Schmidheiny, don't you think, that the time has come to take on the direct and personal coordination and financing of serious as a philanthropic entrepreneur, funding effective research that will produce a treatment for all mesothelioma patients in the world?"

ETERNIT BIS HEARING 4.12.2024

THE DEFENCE

SUMMARY

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- * Forcing will not lead to justice
- * Awareness
- * Investment and intervention
- * Top management responsibility and poor maintenance
- * The city 'stuffed' with asbestos: dust, screeds and floorings
- * why did Eternit go bankrupt?
- * concealment at the top level
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POINT BY POINT

TRAGEDY WITH THOUSANDS DEAD

'What has struck the town of Casale is a tragedy because of the thousands of deaths caused by a terrible disease. Terrible, yes, one dies of suffocation. This tragedy has struck an exemplary community. We have been meeting them for some twenty years (starting with the investigation of the Eternit 1 Maxi Trial) and we only ask for respect for our role. A community whose common denominator is moral integrity. When Mrs Romana was remembered in this courtroom, I felt proud to have known her'.

This is how lawyer Astolfo Di Amato began, defending the Swiss entrepreneur Stephan Schmidheiny with his colleague Guido Carlo Alleva [...]. After the public prosecutors (Drs Sara Panelli, Gianfranco Colace, Mariagiovanna Compare) and the plaintiffs' lawyers (among others, Lawyers Laura D'Amico, Maurizio Riverditi, Giacomo Mattalia, Esther Gatti, Laura Mara, Alberto Vella, Alessandro Mattioda), it was now the turn of the defence. They had already started on 27 November, with some preliminary remarks. At the hearing on Wednesday, 4 December, they moved on to examine the issues on merit. Lawyer Di Amato covered the first part; on Wednesday 11 December, lawyer Alleva will complete it.

A tragedy. There is no - and could not be - difference of opinion between the parties on this point: the terrible and painful trickle of mesothelioma deaths began many years ago and

continues. And the subsequent consideration is also widely shared: 'A tragedy that strikes a community of exemplary integrity needs justice,' said Di Amato.

FORCING DOES NOT LEAD TO JUSTICE

In justice, one must be careful of forcing; in fact, what justice is it?'. The meaning of this question for the lawyer translates as follows: is wanting at all costs the conviction of the defendant Stephan Schmidheiny a true answer of justice? A rhetorical question that, for the defence, already encapsulates the answer: no. And why? The explanation is summarised in the final passage of lawyer Di Amato's speech: 'Schmidheiny is not a scoundrel.

Schmidheiny is a 'son' of his time (40-50 years ago: he was head of Eternit between 1976 and 1986, ed.). Sticking to the knowledge and technical support of the time, he was confident that he could use asbestos in a controlled manner. Then, yes, he was proved wrong, because the deaths continued, but the knowledge of the time did not yet allow us to know that there is no minimum threshold that eliminates the risk of falling ill with mesothelioma. It was only known in the 1990s'. The defence lawyer insisted: 'The defendant's conduct did not violate the regulations'. All the more so, he remarked, that 'the Casale area was literally "stuffed" with asbestos, but not through Schmidheiny's fault; it had happened before his arrival in 1976'. Henceforth, the arguments diverge from those of the prosecution and the plaintiffs, and also from the first-degree verdict of the Novara Assize Court, which sentenced the defendant to 12 years' imprisonment for manslaughter (and not intentional murder as per the PPs request) of 147 victims, [while the statute of limitations applied to 199 cases and in he was acquitted for 46 cases.

AWARENESS

The defence does not deny that the defendant was aware of the risks of asbestos, but not to the extent that people became aware of them after 1986 and even more so in the 1990s. However, the minutes of the Neuss Conference show the defendant's exact knowledge of how harmful asbestos was. And there are Schmidheiny's quoted statements. 'To be or not to be?' was the Hamlet's question he asked himself, meaning "should we continue to use it or stop altogether", knowing that it causes mesothelioma? He chose 'to be', i.e. to continue. And, again, it is Schmidheiny who speaks: 'We must obtain the best result with the least effort'. According to the Prosecution, this statement is indicative of a desire to exploit the business as much as possible while spending as little as possible on safety. For the defence, on the other hand, the defendant's position at the time was this: 'It is important that there is a change in everyone's mentality. The guiding star of the business cannot only be productivity, but also respect for health and the environment'. This was Schmidheiny's intention at the Neuss conference, and, above all, a few months later, when he issued the Auls manual to be scrupulously adhered to when giving information on asbestos (to workers, their families, trade unionists, journalists, public administrators). As the plaintiff lawyer Maurizio Riverditi said, 'you cannot get inside the defendant's head; to understand what he had in mind, you have to analyse the facts'. For the defender Di Amato, this analysis of the facts can be traced back to the intention of 'respecting the rules, if someone complains let him talk to the workers and, if he is still not convinced, give the answers indicated in Auls'. Not least because, Di Amato observes, 'to give correct information, it is not obligatory to shock!'. A

word that had emerged precisely in the Neuss minutes, documenting what had been the reaction of the 35 top managers summoned by the Swiss entrepreneur when he had explained the harmfulness and deadly risks of asbestos: they had been 'shocked'.

Disposing of asbestos was difficult in any case. The defendant pointed out that, in 1982, people were not yet ready to replace it, for example in the manufacture of pipes for pipelines, because there were no other materials that 'could withstand the pressure'. In addition, Di Amato recalled Irving Selikoff, who at the International Conference in New York in 1964 had sounded the alarm about the danger of asbestos as a cause of mesothelioma not only for those who worked with it. But the lawyer pointed out, 'in an interview given to the New York Times in 1976, the scientist stated that "the prohibition of asbestos is not necessary"', i.e., the defence lawyer summarised, 'it could be used in a controlled manner'. According to the defence, this was the actual awareness of the defendant between 1976 and 1986. And, indeed, since in the Italian plants the approach to technical and safety requirements was deficient compared to what was already taking place in the Swiss plants, Schmidheiny made the Neuss laboratory directed by Robock available to train the staff. Robock, according to the prosecution, was a scientist for industry, while Di Amato emphasises "the seriousness of his study of dust and the authoritativeness of his scientific works, which are still consulted and considered a reference point". Alongside the training of personnel, there was the creation of internal control bodies, aka Sil and Copae. Here too, two different visions: for the prosecution, Sil's findings and data were 'inadequate and unreliable', for the defence, on the other hand, they were well-founded: 'Of course,' Di Amato commented, 'they could have been done differently, but with the knowledge of twenty years later!'

INVESTMENTS AND INTERVENTIONS

Lawyer Di Amato made it clear: 'Technical interventions are needed, but economic ones are also needed'. This is where the controversial chapter of investments and money flows from Switzerland to Italian Eternit comes in: many, few, adequate, insufficient? The prosecution, mainly according to the reconstruction by consultant Paolo Rivella, who examined and studied the documentation found, believes that the investments were insufficient to comply with the regulations of the time; and, in any case, Rivella complained about different, confused and conflicting data provided by the defence, between one trial and another, on the real amounts. The defence attributes the cause of the imprecision of the figures to the fact 'that the documentation in this criminal case may be extensive, as the public prosecutor says, but it is monolithic, because a large part was destroyed in the flood in Genoa (where Eternit's registered office was located, and then the receivership, from the mid-1980s until the bankruptcy of 1986, ed.) However, the defence insists on the figure of 33 billion lire (about 16-17 million euros) spent on safety measures, a figure contested by the public prosecutor's office (which highlights as credible only a sheet of paper found in the famous 'secret room' of the Casale plant, on which measures worth only 4 billion lire were noted). Lawyer Di Amato disputes Rivella. In his opinion, Rivella may even have withheld data so that the outcome of the consultancy would serve the prosecutor's thesis.

The attack is more extended to the prosecutor's consultants. The defence lawyer takes his cue from an assertion in the Novara Assize Court's ruling that the prosecutor's consultants are

more reliable than those of the defence, because the latter are paid to bring evidence in favour of the defendant. 'This statement is not acceptable!' said Di Amato. He challenged both Dr Rivella and Prof Irma Dianzani. The attack on Rivella related especially to the investment chapter; that on Dianzani referred to an allegedly inaccurate answer given by the consultant to a question by the defence lawyers; incidentally, this question on the epidemiological subject was put to a scientist who is a gene expert. The defence insisted that interventions had been made and, in support of his argument, he read extracts from a report of the Labour Inspectorate, dated 1987, in which it is written that 'at the beginning of 1974, following a change of ownership when the Swiss acquired shares from the Belgians and took over the majority, and the company launched a vast modernisation plan', for example by transforming the production process 'from dry to wet'. He also read a passage from the judicial commissioner Carlo Castelli's report, written as part of the receivership procedure to which Eternit had been admitted since 1983: 'Investments have been made to the maximum technically achievable limit'.

RESPONSIBILITY OF TOP MANAGEMENT AND DEFICIENT MAINTENANCE

'Was everything perfect then?': the question, in rhetorical form, is raised by Di Amato himself. No; a major impact, in the spread of dust, is attributed by the defence to poor maintenance: 'If, for example, a clogged filter was not replaced...'. However, Schmidheiny, who was at the top 'of the large Swiss group of which a thousand companies were part (one was the Swatch of watches), cannot be held responsible for this type of non-compliance,' says the lawyer. And could you know if the filter was clogging?'. The top management of a group of this size should be asked to account, if at all, for strategic choices, investments, management, production methods, prevention and safety measures

THE CITY 'STUFFED' WITH ASBESTOS: DUST AND BEATINGS

Among the strategic indications coming from above, the defence cites the prohibition, imposed by Schmidheiny in 1976 when he took over the leadership of the asbestos sector (incidentally, the plaintiff's lawyer Esther Gatti stated that no trace of this prohibition has been found), to distribute outside processing waste (powder and scrap), which previously, Di Amato remarked, was instead given to insulate the attics, to make the beatings of courtyards, playgrounds, roads. And what did this lead to? 'That the city was 'stuffed' with asbestos' due to so-called "misuse". Perhaps, being aware of this dangerous widespread practice, Stephan Schmidheiny should have informed the public authorities of the serious risk citizens were running. On the 'improper uses', Professor Andrea D'Anna, the defence consultant, wrote a report, starting with the data from Arpa Piemonte suggesting: '815 thousand square metres of worn roofing, 4635 square metres of asbestos panels (felts), 11 thousand square metres of surface covered by dust in the attics, 28 thousand square metres of beaten surface with the presence of dust. Data that another defence consultant, Prof Canzio Romano, also cross-referenced with the victims' residences'. The Novara Court of Assizes, however, did not take Professor D'Anna's advice into great consideration, pointing out that the study had been conducted without ever going to the site. Indeed, we remember the professor's description of the town of Casale, a description, shall we say, rather surprising for the people of Casale: an expanse of low houses surrounded by fields? A very unrealistic representation of the ancient

city, the historical capital of Monferrato! Lawyer Di Amato, on the other hand, emphasised the importance of D'Anna's consultancy, to underline the massive presence of asbestos due to the improper uses in the area ('granted in the era before Stephan Schmidheiny'), a source of heavy spread of fibres. The improper uses of asbestos in the city and surrounding towns are an undeniable fact; the reservations, however, against Professor D'Anna, concerned both the fact of having observed the city (for the purposes of such an important consultancy) only by means of Google Maps, and the fact of having almost equated, if not even indicated as prevalent, the pollution from improper uses with that caused by the plant and Eternit's sites. The well-known former Piemontese area, between the Renzone houses, where the open-air shredding of waste took place, a practice for which, as Di Amato accurately recalled, Robock himself, after a visit to Casale between 27 and 28 March 1980, had expressed opposition: 'Waste should not be shredded and crushed in open space without the use of water' he wrote in his report. The crushing and grinding took place 24 hours a day, with a bulldozer passing back and forth over the scrap, had started right after 1976, during Schmidheiny's era of management, when the Hazemag Mill had been built, to reuse some of the scrap. Who made the strategic decision to build the Hazemag Mill and to use the waste brought in, among other things, not only from Casale, but also from other factories? And would this source of pollution really have been less important than an attic with dust, as Professor D'Anna hypothesised?

BUT WHY DID ETERNIT GO BANKRUPT?

The defence lawyer then gave voice to a question that his precise and clear illustration of the unfolding of the facts and description of the places, made arise spontaneously: 'How did a well-run company, with continuous flows of money and with technological support appropriate to the time, continue to lose until it went bankrupt?'. The answer comes from the report by the aforementioned Dr. Castelli, who wrote: 'The Eternit company made investments, but smaller competitors did not do as much to clean up the working environment. The Italian government,' Castelli warned, "should adopt the European Union directive as soon as possible so that all manufacturers are required to comply with standards and limits". Here, Di Amato explained, lies the explanation for the bankruptcy epilogue: 'Eternit was burdened with higher costs and, therefore, was less competitive on the market', to the point where it could no longer hold its own. The bankruptcy was in June 1986, but the company had already decided on the path to closure in 1983 in Zurich.

HIDING

In that year, Schmidheiny hired Guido Bellodi, an accredited Milanese Public Relations consultant. He was given the task 'to manage a financial scandal', precisely in view of Eternit's preordained bankruptcy. This was explicitly explained by lawyer Di Amato: 'The Schmidheiny's are a prominent family in Europe, with high economic power. Especially at that time, to make one's own company go bankrupt was to lose face'. This is what Bellodi had to do: manage the image associated with the bankruptcy of a company of the important Schmidheiny group. But in this, according to the defence, there is no attempt at concealment. In this regard, the lawyer gave an example: the letter that the mayor of the time, Riccardo Coppo, had written in 1985; addressed to whom? 'To Stephan Schmidheiny, in Niederurnen,

and, for information, to the prefect and the trade unions. So, it was known who Schmidheiny was, what his role was, and it was by no means hidden!'. The reference to that letter, among other things, evokes Coppo's precise testimony when he was heard in the Eternit 1 trial. It was he himself who produced a copy, the original of which is kept in the archives of the Municipality of Casale. Why had he written it? He explained: 'We had received many and repeated promises from the company that a new, safer plant would be built ([pm?] Colace spoke of "Chimera Casale 3", ed.). But words were never followed by deeds. And in the meantime, the number of sick and dead was growing. As the defence pointed out, the strongly worded letter dates from 1985. Meanwhile, in Zurich, already two years earlier, the decision had been taken to bankrupt the company. What was the value, then, of the repeated promises (at least those between 1983 and 1985) to build a new plant that would overcome the environmental problems of the old factory built in 1906? Former Mayor Coppo gave an answer: 'We realised we were being taken for a ride'. And, as another prominent witness, Bruno Pesce, put it, 'you squeezed the lemon as long as you could'.

THE ONLY CRIMINAL TRIAL IN THE WORLD

'The problems caused by asbestos,' the defendant finally pointed out, 'do not only concern Italy, it is a global tragedy. However, Di Amato stigmatised, 'Italy is the only country in the world where criminal trials are held for asbestos, even today. There was an attempt in France, a few years ago, but the file was archived'. Indeed, in the other parts of the world, civil lawsuits are directly pursued to claim financial compensation for those who have suffered illnesses (or deaths) of occupational and environmental origin. This is the case of the American Johns-Manville, which had been overwhelmed by 16,500 civil lawsuits in the 1980s, cited in this very appeal process. Most recent, then, is the judgement in France against the CMMP company, issued on Wednesday 27 November: the Paris Court of Appeal condemned Comptoir de Minéraux et Matières Premières, which milled asbestos from 1938 to 1975 in its plant in the centre of Aulnay-sous-Bois (Seine-Saint-Denis), to pay the municipality almost €14 million. According to the judges, this is the compensation due for the clean-up of the site that, over the decades, caused thousands of victims, including children who had attended schools in the vicinity for 37 years.

In Italy, where criminal prosecution is compulsory, the prosecution must assess and ascertain whether it was specific personal conduct that caused all those deaths. The community of Casale, exemplary and morally intact, has been seriously wronged, there is no doubt. There is a need to find out whether someone, and who, committed it. For the defence, since 'there is no Mr Eternit', Stephan Schmidheiny is not responsible. The prosecution is convinced otherwise. A trial court verdict has already been delivered. All that remains is to wait for the verdict of the Court of Appeal next year. [what abt the Court of Cassation after that?]

Next hearing on December the 11th

[ps://www.silmos.it/eternit-bis-la-difesa-la-citta-era-imbottita-di-amianto-ma-non-per-colpa-di-schmidheiny/](https://www.silmos.it/eternit-bis-la-difesa-la-citta-era-imbottita-di-amianto-ma-non-per-colpa-di-schmidheiny/)