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Introduction

The undersigned Dr. Barry Castleman testified before the Tribunal of Torino in November 22 2010 in the trial concerning the Eternit case.

Because - among other reasons - the translation was labored and at times incorrect, the following summary of my testimony is offered to the Court.

As an aid to the Court, my book (Barry Castleman, *Asbestos Medical and Legal Aspects*, 5th Edition; New York, Aspen, 2005) was used frequently to support my testimony, and a copy of the book was provided to the Court.

The summary below references the relevant pages of my book in parentheses.

Referenced Summary of Testimony of Dr. Barry Castleman, November 22, 2010

1. Cartels – Principal asbestos-cement manufacturers of 10 European countries formed an international cartel in 1929. This was for price fixing and dividing up markets, illegal in many countries. Similar illegal acts were prosecuted against major sub-groups in the asbestos industry in the US in the 1940s.

Eternit was evidently involved in the cartel arrangements. The criminal intimacy of companies conspiring to set prices and monopolize markets was conducive to them conspiring to suppress knowledge about the deadliness of their products.

(pp 28-32, especially 29)

2. Suppression of knowledge by US asbestos companies involving acts by groupings of companies acting in concert include multiple examples starting in the 1930s.

[The US asbestos industry's actions and those of the UK industry leader, Turner & Newall, have been uniquely disclosed because of the legal system in the US, which provides that parties in litigation disclose relevant documents. Johns-Manville documents were exhaustively examined in one case by the US Justice Department, Turner & Newall documents were thoroughly examined in another case by Chase Manhattan Bank. Firms such as the Eternit companies which did not participate in the US market have not been subject to US legal discovery. (pp 490-491)]

– The US industry leader, Johns-Manville (J-M), and Raybestos-Manhattan participated in 1934 in having critical changes made to a medical report on asbestosis in the weeks before it was published. This was for the expressed purpose of influencing legislation on workers' compensation for asbestosis. (pp 150-151)

- Ten companies supported experimental animal studies starting in 1936 and published in 1951. The executives of the companies met and ordered the authors to remove all disclosures about cancer and tumors, which was done. (pp 49-59)

- Johns-Manville and Raybestos-Manhattan persuaded the editor and publisher of the US trade magazine, *Asbestos*, to defer publishing about asbestosis (1935-1969). (pp 151-153; and the 1935 letters themselves, reproduced on pp 835-838)

3. Knowledge of the large asbestos corporations about the major health hazards of asbestos was strongly prompted by the industry's concerns over the potential cost of compensation to dying and disabled workers. Compensation claims were therefore handled at the highest levels within the asbestos companies. The documented knowledge of the hazards of asbestos by leading asbestos companies, by disease, is as follows:

- Asbestosis - 1930s, based on examples given in Chapter 9, starting with Raybestos-Manhattan, General Motors, Abex. (pp 1-28, 142-163, 226-243, 321-338, 492-496, 560-561, 563-564, 582, 585-588, 594, 602, 605, 609-610, 620-621)

- Lung cancer – late 1940s, based on over 80 articles in the literature linking asbestosis and lung cancer, official recognition of lung cancer as a compensable disease of asbestos workers since 1939 in Germany, and examples of corporate knowledge (pp 41-66)

- Mesothelioma - early 1960s, based on medical reports published in Germany and elsewhere starting in the 1940s and 1950s, and the implications for compensation, regulation, and public concern over occupational and environmental exposure (101-109)

4. Earliest documentation of evidence that Swiss Eternit management knew about asbestosis in 1950 letters to Dutch Eternit from SAIAC submitted to the court.

Opinion: anyone reading the medical literature on asbestosis in 1950 would be expected to read that asbestos exposure was also being linked to cancer. There were at least 80 published references to possible cancer from breathing asbestos dust by 1950. (pp 41-66)

5. Product liability over asbestos as a factor in raising the concern of the global asbestos industry about the consequences of emerging asbestos disease in the late 1970s. Eventually, hundreds of thousands of personal injury cases would be filed against American companies. Corporate defense in this litigation became a dominant concern of US asbestos companies in the late 1970s and led to bankruptcy filings of Johns-Manville and other companies in 1982 and later years. (pp 198-199, 317-321)

6. History of health warning labeling on asbestos and asbestos products, 1952-1980. Theme of warnings history is that the first health warnings were in the US starting 1964, motivated by product liability concerns. The warnings were used to protect the manufacturers legally but with minimal loss of sales. Crucial in the text of warnings was minimizing the disclosure of what health effects breathing asbestos could cause.

- Internal J-M discussions of warning labeling about the hazards of asbestos occurred as early as 1952 in connection with an Illinois state law.
 - But no warnings were applied until 1964, just after Selikoff's report was published about the high death rate from asbestosis and cancer among insulation workers. The warnings were vague about asbestos' health effects and were only placed on asbestos insulation products by J-M and one other firm in 1964.
 - J-M didn't use similar warning labels on sacks of pure asbestos from its mines until 1968 or 1969. By this time, it was also recognized by the American asbestos industry that asbestos-cement products would also have product liability issues, and discussions about warning product users were taking place.
 - A 31.7.1971 interview with Max Schmidheiny and his associates at his villa in Switzerland was recorded by J-M consultants The Boston Consulting Group. This notes the Eternit executives' criticism of J-M President Burnett for his decision "to label the bags [of asbestos] as potentially harmful."
 - By 1976, the British asbestos industry had developed a label "Take Care with Asbestos". (p 788)
 - The British label was seen by the industry by 1978 as a model to introduce in countries when warning labeling became necessary, in order to avoid being required to display the skull-and-crossbones or the word "cancer". Belgian Eternit executive Etienne van der Rest was quoted in this 7.7.1978 AIA "Labelling" memo as directing British companies to not export warning-labelled products to Europe.
 - Van der Rest letter in March, 1980 protested cancer warning labelling by Turner & Newall (UK).
- (In addition to documents submitted to the Court, pp 270-271, 318, 498-506, 559, 616-618, 783-790 – pictures of contrasting labels on pp 788-789 were shown to the Court)

7. International industry collaboration became essential to defend the asbestos industry by 1969-1971 (*International Conference of Asbestos Information Bodies*, London, 24-25 November 1971). This would soon lead to the creation of Asbestos International Association, global umbrella group for coordinating the actions of national and regional asbestos industry trade groups ("Tour d'Horizon" meetings).

Highlights of this reference:

- proliferation of national "asbestos information bodies", from one country in 1969 to 11 in 1971 (p. 4)
- extensive lobbying of UK government detailed, resulting in 1) industry reducing the scope of products regulated and 2) industry involvement in writing of government advisory documents and responses to public and institutional inquiries (20)
- "controlled use" argument: many asbestos products involve no risk and the hazards of others can be prevented by using practical control measures (21)
- Country reports from UK, Holland and US reported the greatest external pressure on the asbestos industry in 1971. Holland report noted "stream of publicity" over Stumphius' report on mesothelioma in shipyard region, with suggestions "that the whole population was at risk". Factory inspector reports, impending product bans, and union demands were occurring in Holland. Still, it was thought that the general public in Holland was still not aware that asbestos was dangerous. (26-29)

- Report from Eternit in Italy noted extraordinary insurance rates for asbestosis and contacts the industry made with government health authorities. (45-46)
- UK report describes broad-based advertising campaign, promotion of films, "Why Asbestos?" and "Fire at Work", editorial writing for newspapers, use of the booklet "Asbestos – Safety and Control" for sales representatives and managers, training and promotion of industry spokespersons, television training for senior directors, and publication of cards claiming that building occupants such as school children were perfectly safe in buildings constructed with asbestos materials. The Asbestos Information Centre was housed in the office of the industry public relations consultants, Hill and Knowlton, experienced from previously defending the tobacco industry (my book, p. 759). The last part of the UK industry report is devoted to responding to increasing, damaging media coverage at least once a month. Concludes with plea that "we must project the same positive message in each of our respective countries." (53-60)
- Final comment of conference chairman from the UK noted that the situation was still "relatively tranquil in such countries as Belgium, Italy, Germany and France" and warned that this would change. He notes that without industry influence, the 1969 UK asbestos regulations would have been far more severe. Warns other countries' asbestos companies to not "let sleeping dogs lie" but prepare in advance for trouble. (65-68)
- Lists attendees including Eternit representatives from Germany, Italy, Holland, Belgium) (Appendix following p. 68)