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The Criminal Trial of Stephan Schmidheiny in Turin, Italy

The Schmidheineys are one of Switzerland's very most wealthy families. Stephan inherited the Eternit asbestos-cement company to run when he was 29, in 1976. These enterprises were run through various years in the 1980s in Europe, South America and South Africa, whereupon some were sold off or closed and others converted to non-asbestos fiber-cement production.

Italy is practically the only country in the world where business executives have been prosecuted and imprisoned for toxic corporate crime. Italy's most famous prosecutor, Raffaele Guariniello, has charged Stephan Schmidheiny with manslaughter for killing Italians with asbestos dust in Italy, Switzerland, and Brazil.

The Italian prosecutor has failed to get the Swiss government to turn over records of factory inspections and compensation for occupational disease of Eternit workers, etc.

As the criminal trial loomed closer, Schmidheiny's representatives tried to settle the civil claims of some people, at the same time requiring that they remove themselves from the criminal case. But they were generally offering people only 30,000-50,000 Euros. Around the time the prosecutor decided to not prosecute Stephan's cement billionaire brother Thomas Schmidheiny, on the basis that he was separate from the asbestos-cement business, Thomas donated 3,000,000 Euros to the victims in the town of Casale Monferrato. This was used for cancer research, payment to lawyers, and for the town, where Eternit's plant opened in 1906 and was demolished in 2006.

The trial started in Dec. 2009 and is expected to finish in mid-2011. The trial followed 10 years of investigation starting in 1999 and takes place only on Mondays. If convicted, Schmidheiny can appeal two more levels to a court in Rome and remain free during the appeals under Italian law. The possible sentence is about 12 years.

The people of Casale brought me to Turin to testify. I was there to testify about the global perspective on what went on in the asbestos industry, and talk about documents implicating Eternit. Much has to be based on what the US and UK industry leaders did, we have seen their documents in US legal cases. But Eternit avoided the US market, possibly in some cartel deal with the others, so most of what we know about Eternit comes from Johns-Manville and Turner & Newall correspondence and documents mentioning them in some way.

The translator and I took our place immediately in front of the 3 judges, and trial started without the formality of swearing in the witness. They asked to see my passport, recorded my name, and we began. The translation was even worse than I realized at the time, the audio recording showed that both key questions and answers were defectively communicated. Journalistic reports in La Repubblica criticized the court for not having a good translator.

The Eternit documents I introduced included 1950 letters from the Swiss parent group of Ernst Schmidheiny to the Eternit subsidiary in Holland discussing articles on asbestosis. I testified that anyone reading the literature on asbestosis in 1950 could hardly avoid coming across data and comments also linking asbestos to lung cancer. From the Johns-Manville archive came a report by consultants for J-M on a 1971 interview with Max Schmidheiny and his associates at his villa in Switzerland. Schmidheiny and his associates were critical of Johns-Manville President Burnett for placing health warnings on sacks of asbestos exported from J-M's Quebec mine starting in 1969. (The Eternit men were said to have suggested as an alternative to change to dust-free sack materials!)

Later in 1971, the transcript of International Conference of Asbestos Information Bodies (from T&N archive provided by International Ban Asbestos Secretariat), which Eternit people from 4 countries attended, shows a rapid growth of national asbestos industry propaganda and lobbying offices at that time. Only one such group existed in 1969, the UK group (Asbestos Information Centre) sharing offices with experienced tobacco industry damage control specialists Hill & Knowlton. By 1971, there were asbestos industry groups in 11 countries including the US. The UK speakers detailed the role the UK asbestos industry played in blunting the impact of government regulation and influencing the text of materials the government issued on how the public and institutions should assess and deal with asbestos exposures. In warning all the others to prepare for trouble, one of the British speakers observed that things were still "relatively tranquil" in Belgium, Italy, Germany and France. The presentations show that problems were raging over asbestos in the UK, US, and Holland; as a mortal hazard to asbestos factory workers and shipyard workers, over resulting union demands, publicity about the public at large being endangered, increased insurance costs, and the increased attentions of government inspectors and regulators.

The industry set up an umbrella group in 1975 to coordinate its defense internationally. A 1978 Asbestos International Association memo records a discussion about warning labeling. It describes how the recently introduced UK "Take Care with Asbestos" label had been adopted in several countries as acceptable to the authorities, and notes the view that when use of some health warning label became unavoidable this should be the style selected. That, it was observed, was preferable to being required to use a label with a skull-and-crossbones symbol or the word "cancer". At the end, Etienne van der Rest of Belgian Eternit was recorded as requesting that the British do their "utmost" to avoid having warning-labeled asbestos products shipped into Europe.

Last, an exchange of letters from van der Rest to T&N executive Harry Hardie in March 1980 starts with van der Rest whining that T&N was starting to use a cancer warning label on asbestos goods and asks what the justification was. Hardie replied that European asbestos-cement producers had no idea how things are in the asbestos litigation in the US.

[I first met Etienne van der Rest at a conference in Washington in 1977 after speaking about "Hazard Export," featuring the asbestos and chemical industries. He was a very tall, pale, cadaverous-looking man, who came over to me and reached down and put his arm around me as he spoke. If you were making a movie, you couldn't beat this guy for

casting as a character personifying evil. When later I saw the 1978 document showing him trying to keep UK-warning-labeled asbestos products from coming into Europe, I wrote to him asking how he could live with himself doing such a thing. The only other time I saw this guy was at the 1986 hearings on the US EPA's proposed rule to ban most uses of asbestos. There, the Eternit men argued that a US ban on asbestos-cement pipe would be disastrous for poor countries needing it to supply drinking water. I walked over to van der Rest and said that I had always attributed most of the human suffering in the world to the imbalance in power and wealth, but after hearing from Eternit that day I realized it was all because of the lack of asbestos-cement pipe. I can only wonder what van der Rest felt when he lay dying from mesothelioma years later. His Belgian company doc also died from mesothelioma, I understand.]

The defense lawyers had no time to question me that first day and asked for two weeks to read my book. Like it was a surprise! I told the judge I would be able to stick around another week, and he ordered that we continue then.

During that week, I met repeatedly with the prosecutor and his staff, and with the lawyers for the victims in the community Casale Monferrato (a company town where the Eternit plant employed as many as 2000). At their requests, I prepared from memory a 3½ page summary of what I had tried to tell the Court, and we discussed what additional questions the lawyers might ask me when the trial resumed.

Prosecutor Guariniello has an extensive network of academic consultants and other experts in medicine, epidemiology, industrial hygiene, and accounting. He hopes to institutionalize a judicial entity charged with investigating deaths on the job that are criminal. He has epidemiologists looking through government statistics looking for occupational cancers. This case is something of a breakthrough in charging the foreign owner-executives, not just local managers. It involves legal-accounting detective work in tracing responsibility between the people who decide what goes down and what goes down.

The new translator, Vicky Franzinetti, was a great translator, and the second trial day went well. I introduced the summary I had written, which had been professionally translated into Italian. This Italian translation and my Curriculum Vitae I handed to each of the 3 judges. When he requested one, I stepped over to Mr. Schmidheiny's lead lawyer and handed him an Italian translation. It was the defense's turn to cross examine me. As I had suspected, Schmidheiny's main lawyer rose and said he had no questions. A lawyer for Etex, the Belgian Eternit, there for civil claims (there are civil claims for damages wrapped up inside of the criminal case), for reasons best known to him, asked me for dates of van der Rest documents I had already submitted to the court. So, this time with a good translator, I again described these to the judges in some detail and gave the date of each.

The deputy prosecutor then asked me for the story of internal corporate discussions in the US about putting the first mild health warnings on asbestos-containing boards. This was illustrated with internal John-Manville memos from 1958 and minutes of the Asbestos

Cement Products Association between 1968-70. In its first health standard, OSHA required warnings on these products in 1972. But in Europe, the Eternit companies made these products through the 1980s and appear to have never bothered to put health warnings on asbestos-cement sheets and pipes.

The burden on Eternit in this case is to have done what was technically feasible to protect people both in their asbestos plants and in the surrounding neighborhoods. So I cited parts of the 1969 UK asbestos regulations and 1972 OSHA asbestos rules, to show what other major firms were required to do while Eternit was doing little to protect workers and nothing to lessen the hazards of its wastes to plant neighbors in Italy. I noted the UK and US requirements for wastes to be disposed of in impermeable containers.

Guariniello and the chief judge each asked one question, and then I asked to speak. I offered to answer any question the court might have by correspondence, and said I might send additional references to support points made in the trial. Last, I thanked them for the wonderful translation. After I left the room, I handed a copy of my book to one of the scientists working with Guariniello to take to him. It was inscribed with respect for his efforts to prosecute corporate criminals of the asbestos industry. It was all over in an hour and a half.

It was widely agreed that the defendants had missed their chance by not all telling the court that they would have no questions for me at the end of the first Monday's proceedings. They would have been better off sending me home then. But it is also widely believed that the defense lawyers are doing all they can to prolong this trial, then expected to run for another year, so that may explain their actions. Schmidheiny's fleet of lawyers, public relations flaks, etc. is estimated to cost about 10 million euros a year.

Supplemental Statement to the Court

Upon reflection, I wrote a summary for submission to the court that elaborated on points made in the second trial day, focusing on the issue of warning people about the dangers of asbestos as having central importance. The apprehension of US asbestos companies about their potential product liability (which would eventually devastate them), even before US federal regulatory agencies were created to protect workers and the environment, goes at least as far back as the 1950s. Soon after it was created by the Congress, OSHA required warnings on products such as asbestos-cement sheets and pipes in its 1972 asbestos regulations (saying that breathing asbestos could cause "serious bodily harm").

In contrast, the lack of product liability law in Europe and the lack of warning label requirements in European workplace asbestos regulations enabled manufacturers in Europe to avoid warning workers and the public at no financial risk. Eternit executives accordingly weighed in repeatedly against the use of health warning labels and even tried to get UK firms to not export labeled asbestos products to the continent in 1978. Apparently, Eternit went on making these products through the 1980s and never placed health warnings on them or in product brochures. It appears to me that the prolonged

ignorance of workers and the public at large was vital in the expansion of markets for asbestos products after the 1930s, by which time the lethality of asbestos dust was well established medically. I quoted a 1975 Union Carbide internal memorandum saying that it would be “between serious and fatal” to the asbestos business to place warnings on sacks of asbestos using the word “cancer.”

I also attached material submitted by Swiss Eternit Group at the 1986 EPA hearings on banning asbestos in the US. This included statements that the firm regarded worker and environmental protection as the responsibility of top management. One excerpt attached to the company’s testimony came from a 1984 asbestos industry report purporting to describe the best technology available in US asbestos-cement manufacturing plants. “All three asbestos cement pipe manufacturers visited have full time engineers and industrial hygienists devoted to minimizing asbestos dust exposure in all work sites.” Fully automated, “totally enclosed” asbestos bag opening machinery was also described in this excerpt. Airborne asbestos fiber measurements were reported. Eternit’s submission of this to EPA, I thought, invited comparison with conditions at Eternit’s own plants in the mid-1980s.

The trial was winding to a close in the spring of 2011 with a verdict expected from the trial court in September. Fernanda, Laurie, and I were invited to a commemorative memorial day event on April 28, 2011, where the documentary film on the case by Niccolo Bruna was shown in Casale Monferrato. Red, green, and white “Eternit! Giustizia” banners were flying from balconies and buildings all over town, even a private bank building on a public square. It was evident that the whole town knew about the trial. The Eternit factory had been the only big employer in this beautiful part of the Italian countryside, and everybody in town had relatives or friends who had suffered from asbestos. Confidence was high that the trial court would convict Schmidheiny and the old Belgian Eternit executive. People all over the world awaited the decision of the Turin court in the world’s only criminal trial of asbestos industry owners and executives, aside from

Barry Castleman, May 1, 2011