

UPDATE ON GLOBAL “ASBESTOS JUSTICE” 2012

Laurie Kazan-Allen

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In the last year, there has been a huge shift in the judicial fortunes of one former asbestos Goliath. It was not Johns-Manville, Turner and Newall or Cape Asbestos, asbestos titans of yesteryear; the price these companies have paid for the negligent and immoral use of asbestos is well known. One of their number, however, an industrial group which was “probably the largest manufacturer of asbestos cement in the world,”¹ had long escaped the fate shared by its collaborators. The name of the last man standing was Eternit. Through long-term planning, expert public relations, phenomenal contacts and good luck, the Eternit Group of companies had remained virtually unscathed and unknown outside the localities where its asbestos factories operated. Not any more. A verdict handed down on February 13, 2012 changed all that. But one judgment, no matter how iconic, does not make a trend. To gain a fuller appreciation of the significance of the landmark decision of the Turin Court, this development is best seen in a global context. This paper will examine actions taken against Eternit companies in key jurisdictions over the last twelve months with a particular focus on the case spearheaded by Prosecutor Raffaele Guariniello on behalf of thousands of Italians killed by exposure to Eternit asbestos.

What Was Eternit?

Eternit has been the name of dozens of manufacturing companies and scores of building products; a dominant multinational industrial group, two global asbestos conglomerates, a brand, a patent and a generic term: in many markets the word “Eternit” was used to denote a range of asbestos-cement building products regardless of the trade mark, just like Kleenex is used interchangeably for the word tissue and Hoover for all makes of vacuum cleaner. To simplify matters and for the purposes of this paper we will concentrate on two Eternit conglomerates: Eternit Switzerland and Eternit Belgium. By the mid-1980s,

- the Swiss Eternit Group, which had been part-owned by the Schmidheiny family since 1920, controlled the parent company in Switzerland as well as German Eternit, South Africa’s Everite, four factories in Italy, affiliates in Saudi Arabia, Costa Rica, Guatemala, El Salvador and Honduras and interests and businesses in a number of other Latin American countries including Brazil, Bolivia, Columbia and Nicaragua. The annual turnover of the Swiss Eternit Group in the mid-1980s was two billion Swiss francs.
- the Belgian Eternit Group, owned by the Emsens family, controlled Eternit entities in Belgium, Holland, Great Britain and France and had interests in Zaire, Burundi, Angola, Nigeria, Argentina, Peru, Uruguay, Chile, Paraguay and the Philippines.

There were incestuous and overlapping interests and relationships across the spectrum of Eternit companies. There was also a shared philosophy which prioritized corporate profits over everything else; in the climate which existed, hazardous asbestos exposures became a routine occurrence. Typical examples of the dangers to which Eternit workers and local people were exposed by the company’s negligence are the following:

¹ Evidence given by Eternit Building Products Limited to the (British) Advisory Committee on Asbestos, 1976.

- In Japan, Eternit “made workers take their work clothes back to their houses...” Knowledge the company had about asbestos diseases amongst the workforce was closely guarded with victims and their families being kept in the dark about the results of medical check-ups.
- Despite the fact that cases of asbestosis were diagnosed amongst Eternit workers in the Netherlands in 1956, 1972, 1975, 1981 and 1982, the company did not disclose this information to the authorities nor did it compensate the injured.
- When the Italian Eternit company declared bankruptcy in 1986, the factory in Casale Monferrato was shut and sacks of raw asbestos and contaminated debris were left in place; Eternit never paid a penny to decontaminate the redundant buildings, dumpsites, soil or river it had polluted.
- As late as 1995, bags of raw asbestos were still being opened with a knife and manually emptied into a mixer at the Eternit plant in Thiant, France.

If there were any doubt about the culpability of Eternit’s executives, a document obtained and translated from the original French by the International Ban Asbestos Secretariat (IBAS) establishes Eternit’s awareness of the asbestos hazard over 80 years ago. The letter, sent in 1950 from Eternit Belgium to Eternit Switzerland, was categorical:

“You will remember that we ourselves have already drawn your attention to asbestosis, through our letter of 15 May 1931. In 1933 we received the report of Dr. E.R.A. Merewether, which was discussed at the seventh sitting of the Correspondence Committee for Industrial health of the International Labour Office, and since then we have been continually occupied with precautionary measures, of which we have already for many years been aware...”²

It appears that this letter was one of a series about the dangers of asbestos. One month earlier (March 13, 1950) the Secretary of the international cartel of asbestos-cement stakeholders had written to N.V Eternit in Amsterdam referring to previous correspondence from Holland on the subject of asbestosis and confirming the cartel’s plans to instigate an enquiry amongst its members regarding their experience with asbestosis.³ These documents are however just the tip of the iceberg. Through its worldwide connections, which were second to none, and the participation of Eternit personnel in international meetings and industry discussions, there is no doubt that information on the asbestos hazard was available to the Eternit management.⁴

Point of Interest

During the July 1986 Congressional hearings regarding the EPA’s Asbestos Ban And Phase-out Legislation, Etienne van der Rest (born 1925), Chairman of Eternit Belgium, a board member of many Eternit companies, and Chair of the Governing Council of the Asbestos International Association warned of the detriment to people in the developing world

² Bob Ruers, ‘Eternit and the SAIAC Cartel’, in *Eternit and the Great Asbestos Trial*, ed. by D. Allen and L. Kazan-Allen (London: IBAS, 2012) pp. 15-20.

<http://ibasecretariat.org/eternit-great-asbestos-trial-toc.htm>

³ See Appendix A, English translation of letter written in French to N. V. Eternit by SAIAC, international cartel of asbestos-cement stakeholders.

⁴ Barry Castleman, ‘The Criminal Trial of Stephan Schmidheiny in Turin, Italy’, in *Eternit and the Great Asbestos Trial*, ed. by D. Allen and L. Kazan-Allen (London: IBAS, 2012) pp. 53-56.

Also see: <http://asbestosinthedock.ning.com/profiles/blogs/field-report-day-29-experts-1>

should asbestos be banned: “the asbestos-cement pipe is,” he said “the perfect answer” to the endemic lack of water and housing.⁵ Like other asbestos vested interests who testified at the hearings, Van der Rest alleged that the U.S. asbestos ban could not be justified either medically or scientifically. Van der Rest paid a high price for his loyalty to the asbestos cause; he died of mesothelioma.

Eternit’s “Annus Horribilis”

On November 24, 1992, Queen Elizabeth II made a speech commemorating her 40th anniversary as Monarch in which she said: “1992 is not a year on which I shall look back with undiluted pleasure. In the words of one of my more sympathetic correspondents, it has turned out to be an ‘Annus Horribilis’.”⁶ For Eternit executives and shareholders, their horrible year began in the Summer of 2011. A brief round-up of what took place during the following months is informative.

Eternit’s “Annus Horribilis”

Date	Country	Issue
August 26, 2011	Brazil	Proceedings begun for environmental contamination caused by Eternit’s operations at the Poçoões asbestos mine.
November 28, 2011	Belgium	First successful case against Eternit, Belgium for environmental asbestos exposure. ⁷
January 10, 2012	France	Judge Marie-Odile Bertella-Geffroy initiated an enquiry into the actions of key personnel in the French asbestos trade association, a body closely linked to Eternit and other asbestos stakeholders. ⁸
February 13, 2012	Italy	Eternit executives sentenced to 16 years in prison by Turin Court for causing wilful permanent environmental disaster and failing to comply with safety rules.
February 2012	Switzerland	Test case announced for environmental victim exposed to asbestos pollution created by Eternit plant. ⁹
March 15, 2012	Holland	PhD dissertation defense by lawyer Bob Ruers of “Power and Countervailing Power in Dutch Asbestos Regulations;” ¹⁰ a document which details Eternit’s role in Holland’s asbestos epidemic.
March 29, 2012	Spain	23 former workers from Uralita, an Eternit subsidiary, awarded €1.7 million (\$2.3m) by a Madrid Court. ¹¹

⁵ Extract of Etienne van der Rest 1986 testimony.
<http://www.ibasecretariat.org/epa-file-f1-020e-p72-82.pdf>

⁶ <http://www.youtube.com/watch?v=dHIEzh5ky1A> [0-19 second.]

⁷ Yvonne Waterman, ‘Belgian Family Wins Historic Court Case Against Eternit’, in *Eternit and the Great Asbestos Trial*, ed. by D. Allen and L. Kazan-Allen (London: IBAS, 2012) pp. 81-85.

⁸ http://www.lepoint.fr/societe/les-lobbyistes-de-l-amiante-mis-en-examen-10-01-2012-1417114_23.php

⁹ *Big compensation thanks to your trial*. La Stampa. February 14, 2012.
<http://www.scribd.com/doc/81558986/La-stampa-14-02-2012>

¹⁰ The Dutch title of Dr. Ruers’ thesis is: “Macht en tegenmacht in de Nederlandse asbestregulering.”

Email April 15, 2012 from Bob Ruers.

¹¹ http://ccaa.elpais.com/ccaa/2012/02/29/madrid/1330521370_064387.html

April 3, 2012	Holland	Court of Appeal verdict for carpenter exposed to Eternit asbestos products between 1956 and 1967; Eternit had knowledge of the asbestos hazard and should have protected users. ¹²
April 6, 2012	Italy	Case brought against Eternit, with Stephan Schmidheiny named as a defendant, for occupational and environmental asbestos exposure caused by operations at the Balangero chrysotile mine. ¹³
April 16, 2012	Italy	Opening of court proceedings in Voghera of lawsuit against Fibronit, an Eternit collaborator, for occupational and environmental mesothelioma deaths in Broni. ¹⁴

The Great Asbestos Trial

Amongst the many adverse developments to impact on Eternit over recent months was the judgment handed down in “The Great Asbestos Trial,” the largest and most complex asbestos case ever heard in a European criminal court.¹⁵ The legal proceedings in Turin were “great” in all senses of the word, in the: number of aggrieved parties (~3,000), legal representatives (~150), municipalities, issues and worksites involved; two-year duration of the trial; fundamental legal concepts explored; decade of painstaking and meticulous research required to bring the defendants to court; expectations of the bereaved that the verdict would recognize the cataclysmic nature of the crimes committed. Because of the extraordinary nature of this case and the total lack of literature on Eternit in the English language, it was decided that IBAS would produce a monograph entitled: *Eternit and the Great Asbestos Trial*. This text was officially published on February 13, 2012 to coincide with the handing down of the court verdict.

The defendants in this trial were former executives from the Swiss and Belgian Eternit Groups, enterprises which exerted control over operations at Italian asbestos-cement factories. Industrialists Stephan Schmidheiny (Switzerland) and Baron Louis de Cartier de Marchienne (Belgium) were accused of causing permanent environmental disaster and failing to comply with safety rules. That this lawsuit achieved an iconic status both in Italy and abroad was a reflection of the universal principles considered. Was there, indeed, a human right to life, one which takes precedence over shortcuts that speed up manufacturing output and minimize production costs? Could individuals be held liable for the effects of commercial operations that endanger life and pollute the environment?

Understanding the Italian legal system posed something of a challenge for international observers. Explaining the basis of the Italian system, Sergio Bonetto, a lawyer representing a number of plaintiffs in the trial, wrote:

¹² Email received from Bob Ruers, April 14, 2012.

¹³ Evidence collected shows that for many years Eternit owned 50% of the mine. Amiantifera nuova Eternit. [The asbestos quarry is the new Eternit.] La Stampa. April 6, 2012 <http://www3.lastampa.it/torino/sezioni/cronaca/articolo/1stp/449253/>

¹⁴ Eternit dietro la strage Broni? [Is Eternit behind the Broni massacre?] Il Monferrato. April 13, 2012.

¹⁵ Romana Blasotti et al. ‘Asbestos Activism in Casale Monferrato’, in *Eternit and the Great Asbestos Trial*, ed. by D. Allen and L. Kazan-Allen (London: IBAS, 2012) pp. 35-38.

“Above all it should be specified, especially for readers familiar with legal systems in English-speaking countries, that the Italian system, like most systems of Roman and Napoleonic origin, is based on the compulsoriness of engaging in criminal proceedings. That is, through the penal code or specific laws, the state defines all conduct it considers criminal and sets minimum and maximum sentences. If such conduct has occurred (and the judicial authorities are made aware of it in any way), then a criminal investigation must be conducted. The institution qualified to conduct such investigations is the Public Prosecutors office.”¹⁶

Personally speaking, I found several concepts difficult to grasp:

- “The penal code can only be applied to physical persons. No legal entity (organization, company, institution, association or party) can be charged with a crime or sentenced. A company cannot be indicted or sentenced for murder or pollution of the environment; only the person running the company at the time the crime was committed can be so indicted or sentenced.”
- A defendant can effectively buy his way to freedom or a much-reduced sentence by coming to a private arrangement with an injured party.
- The criminal proceedings can incorporate a civil lawsuit.
- The court hearings took place on Mondays from 9 a.m. till 2 p.m; towards the end of the trial, the court sat twice a week.

The Verdict

On February 13, 2012, the defendants were found guilty for their part in the humanitarian catastrophe caused by Eternit’s asbestos operations in Casale Monferrato (Alessandria), Cavagnolo (Turin), Rubiera (Reggio Emilia), Bagnoli (Naples) and Siracusa (Sicily). For their crimes, Schmidheiny and Marchienne were sentenced to 16 years in prison and ordered to pay compensation estimated at more than €5 million (\$124.5m).

In court to hear the long-awaited judgment were 1,500+ people from Casale Monferrato, the town at the centre of Eternit’s Italian operations. Twenty-three coachloads of asbestos victims, family members and community activists had set off before dawn from Casale to witness the resolution of this historic case. They were joined in the court by hundreds of representatives of asbestos victims’ groups from France, Belgium, Switzerland, the UK, Brazil and the US. In recognition of the enormous international interest in this case, for the first time ever the provision of simultaneous translation into English and French was sanctioned by the authorities; these translations were streamed live over the internet.

The proceedings began at 9:30 a.m. when the Judges entered courtroom 1. The initial minutes were taken up by procedural aspects and then it was announced that the reading of the verdict would start at 1:15 p.m. Within seconds of the afternoon session beginning, the wait was over. As we heard the English translator pronounce the words “In the name of the Italian people, the Turin criminal court declares the defendants Schmidheiny and De Cartier guilty,” we knew that the victims’ 30-year campaign for justice had succeeded. Commenting on the outcome, the Associazione Familiari Vittime Amianto (Association of Asbestos Victims’ Families) said:

¹⁶ Ibid. page 49.

“[we] believe this judgment is a turning point in history as Justice is awarded to thousands of workers and members of the community who were killed, slaughtered, especially in Casale Monferrato and Cavagnolo, where the Italian Eternit plants were.”

Turin Public Prosecutor Raffaele Guariniello, who pioneered this landmark case, told journalists surrounding him in the aftermath of the verdict: “Today we have the right to dream that justice can be done and must be done.” Guariniello has already started work on Eternit 2, a case involving hundreds of Italians who have died since 2009 from asbestos-related diseases.

Defendant Stephan Schmidheiny’s legal team issued a statement within hours of the judgment being handed down: “This verdict is totally incomprehensible for Stephan Schmidheiny’s lawyers, which is why they plan to appeal to the next higher authority.” Schmidheiny lawyer Astolfo Di Amato told journalists: “The sentence is dangerous because if in Italy we affirm the principle that the major shareholders of a multinational company is responsible for what happens in each peripheral plant, no one can invest in Italy any longer.”

With modern technology the news spread worldwide in minutes. Coverage in Italy was massive and national newspapers ran front pages stories about the verdict with TV reports on many channels. In Canada, speculation was rife about the implications of this trail for asbestos propagandists and executives in Quebec. In France, attempts to replicate the Turin process are being made but success has yet to be achieved, while in Brazil, another country which has experienced massive damage at the hands of Eternit, prosecutors regard the 128-page Italian verdict as a precedent to be used in Brazilian asbestos lawsuits. February 13, 2012 was a great day for the people of Casale Monferrato and other Italian towns where people’s lives counted for nothing in Eternit’s pursuit for profits. It was a day which gives us hope that in every jurisdiction around the world asbestos profiteers can be held to account for the damage they have done.

Appendix A

To
N.V. ETERNIT
20-22 Nieuwe Doelenstraat
Amsterdam
Hollande

Date: March 13, 1950

Dear Sirs:

Re: Silicosis/asbestosis

We have the **privilege/honor** of returning to your letter of February 14, 1950, the content of which has had our full attention.

Unfortunately, we are not in a position to make detailed information available to you on the subject of asbestosis; however, we do intend to write to all our members on the subject, and in doing so will request that they transmit to us what they know on the subject of this disease. Please find enclosed our outline for a circular; we would be very grateful to you if you would examine it and let us know if you think its content has been **conceived/designed** with sufficient precision and detail.

As soon as we receive your reply, we shall send our circular to all our members without fail, and at that time we will make every effort to bring together the greatest amount of information possible, so as to provide you with written material capable of performing the desired service.

We look forward to your reply.

Yours faithfully,

SAIAC S.A.
The Secretary

Enclosed:
1 outline for a circular