13. ETERNIT IN BRAZIL

By Fernanda Giannasi

Asbestos Cement in Brazil

In 1901, Austrian Ludwig Hatschek, inventor of fiber cement obtained the patent for a production process, based on the manufacture of paper, using a slurry of cement and asbestos fibers to produce a product that he named Eternit, from the Latin “aeternitas”, due to its properties of durability and strength, which presumably could last an eternity. This material was to become more generally known as asbestos cement.

During the first decades of the 20th century, various entrepreneurs acquired licenses from Hatschek to begin production of asbestos cement. The Swiss Eternit and the Belgian Eternit, among others, were founded in 1903 and 1905, respectively. The French Eternit was founded by the Belgians in 1922.

In December 1907, authorization was obtained to establish the first asbestos-cement production line in Brazil; Hatschek only permitted a single company to use the Eternit name in each country interested in the process. At that time the Pantaleone Arcuri & Spinelli company, in the city of Juiz de Fora, state of Minas Gerais, took the initiative to establish this “revolutionary process” in Brazil under the name Cimianto. The customs tariffs to import the “magic mineral” (asbestos) and the transport and operational costs soon led to its bankruptcy.

In the mid-1930s, the already established European companies, like the Swiss, Belgian and French, began exporting the Eternit process to other continents in their efforts to win new markets, especially to places with potential asbestos reserves, like Brazil, thus guaranteeing its supply through acquisition of mining companies.

S.A. Mineração de Amianto (SAMA) was founded in Brazil in 1939, obtaining government authorization to develop the São Félix mine in the municipality of Poções, currently Bom Jesus da Serra, in Bahia. On the same day that authorization to develop the mine was obtained, SAMA was bought by S.A. Brasilit, belonging to the French group Compagnie Pont-à-Mousson, that later changed its name to Saint-Gobain.

On January 30, 1940, Eternit do Brasil Cimento Amianto S.A. was organized as a partnership between the owners of the Swiss Eternit and the Belgian Eternit.

Eternit in Brazil

Asbestos-cement production in Osasco, in the metropolitan region of São Paulo, began in August 1941 and completion of plant construction occurred in 1942, as shown in the photo below.

Photo: Eternit periodical "O Telhadinho."

In 1949, a new plant was inaugurated in Rio de Janeiro.

With the expansion of the Brazilian civil construction market, driven by the feverish developmentalist era of the 1950s, Eternit began working with distributor networks, opening sales offices and expanding its line of products to include besides the traditional corrugated asbestos-cement roofing sheets, water tanks, pipes and flat sheets, among others.

In 1967, during the military dictatorship and with good relations with the military officers in power and their complete support, the extension of the asbestos-cement business to more distant regions began, decentralizing

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2 In http://www.eternit.com.br/corporativo/historia/index.php

3 Ibid.
the business from the Rio de Janeiro–São Paulo axis. This year, the Simões Filho plant was inaugurated in Bahia to service the Northeast region. This same year, Eternit became a partner of Brasilit (Saint-Gobain), with 49% of the capital of SAMA, initiating activities to develop mining of the mineral fiber at the Cana Brava Mine in Minaçu, Goiás, currently the third largest producer and global exporter of asbestos (accounting for 14% of worldwide asbestos production).

With the discovery of this new pit, the country becomes practically self-sufficient in the supply of asbestos and completely independent of imports for the asbestos-cement sector. The old São Félix mine was decommissioned, leaving an immense social and environmental liability, for which Eternit became a successor-in-interest by the end of the 1990s as we will see further on.

In 1971, the Goiânia plant was founded to serve the Mid-west region and the Colombo plant, which is currently Eternit’s largest manufacturing unit, followed in 1972 to service the South region of the country.

In 1980, Eternit incorporated the Wagner S.A. company, a producer of drywall or plasterboard⁴ and in 2002 it closed its operations in Ponta Grossa, Paraná, transferring the entire production line of the Wall Panel division to Colombo, leaving a large environmental liability, to be discussed further on, and a so far unknown number of people sick or deceased.

In the last decade of the 20th century (although information on the exact date is contradictory), the Swiss group officially withdrew from the asbestos business and Eternit was sold, falling under the control of the French group Saint-Gobain, its partner in SAMA.

Everything seems to indicate that the Swiss group was secretly involved with the asbestos business in Brazil until at least 2001, according to the testimony of Élio Martins,⁵ the current President of Eternit, even though the official propaganda publicly denied any involvement after the early 1990s.⁶

Many explanations exist for this sale of the Eternit group to the French. Among them is one found in the autobiography of the heir to the Eternit empire, at 37 years old, Stephan Schmidheiny:

“The controversy over the potentially harmful effects of asbestos dust was a shock to me in many respects. I myself had been dangerously exposed to asbestos fibers during my training period in Brazil. I frequently helped load asbestos bags and pour the fibers into the mixer, breathing in deeply all the while due to the exertion the work entailed. At the end of a hard day's work, I would often be covered in white dust.”

The Brazilian weekly magazine Época, issue 285,⁷ from 10/30/2003, analyzed the problem as follows: “The asbestos scandal was key in pushing Schmidheiny to change his business practices and become an advocate for conscientious administration, as a way to pay for his sins.”

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⁴ Drywall is a technology that replaced conventional masonry for internal divisions (walls, ceilings and coverings) of buildings and panel compounds that are lighter and thinner. It is currently produced, in the case of Eternit, from laminated wood or plasterboard, lined on both sides with wooden layers covered by cement flat sheets reinforced with synthetic fiber and pressed (previously the flat sheets were made of asbestos).

⁵ On May 8, 2001, in the official transcript of the hearings of the Special Committee of the Federal House of Deputies on Bill No. 2186/96, President Élio Martins of Eternit S/A explained the ownership structure of his company in the following terms: “Eternit is a publicly owned Brazilian company, whose shares are traded on the São Paulo Stock Exchange (BOVESPA). No single owner has complete control of the firm. The main shareholders are as follows: DINAMO - Fundo de Investimentos em Ações: 25.17%; FUNDO DE PENSÃO DO BANCO CENTRAL (the pension fund of the Brazilian “Federal Reserve”) - Previdência Privada - CENTRUS (owned by employees of the bank): 17.49%; SAINT-GOBAIN (Brasili): 9.11%; FUNDO DE PARTICIPAÇÃO SOCIAL DO BNDES - Banco Nacional de Desenvolvimento Econômico e Social (National Bank of Social and Economic Development) which is a correspondent of the Inter-American Development Bank (IDB): 8.41%; AMINDUS HOLDING AG: 6.81%; Empreendimentos e Participações HOLPAR: 4.31%.”

In carrying out a more detailed search of the origins of AMINDUS HOLDING AG, we run into its ties with businesses which form part of the business empire of Stephan Schmidheiny, such as Nueva AG and Amanco AG, located in the Swiss canton of Glarus.

⁶ When confronted about this contradictory statement by the President of Eternit, that Schmidheiny had continued to participate in the asbestos business in Brazil for over a decade after he had claimed that he had left it forever, Peter Schuermann, Schmidheiny's spokesperson, responded as follows to the editor of Sonntags Blick on December 30, 2004: “It is correct that Stephan Schmidheiny sold the Brazilian shares in Eternit in 1988, as I had wanted; neither he nor any of his holdings hold or have held any stock in Brazilian interests of that time. Over the decades there were a number of companies that used the name ‘Amindus.’ In the proceedings made available to me there is no evidence that this is the Amindus Holdings in Glarus that you are thinking of; there is only mention of an Amindus Holding and an Amindus Holding AG.”

⁷ In http://www.stephanschmidheiny.net/business-career/?id=1

⁸ In http://revistaepoca.globo.com/Revista/Epoca/0,E01,EDG60937-6014-285,00.html
A little later in the same article the magazine pointed out: “Schmidheiny made a public announcement that he would stop producing asbestos-containing products in the early 1990s only after he had sold Eternit to a French company, Saint-Gobain, along with all of its employee lawsuits.”  

Forbes magazine, in its 10/5/2009 issue, however, offered another explanation by Schmidheiny for his 180-degree turnaround in company policy: “My company was heading toward bankruptcy as a consequence of the combined effects of asbestos-related problems and a major slump in construction markets. Thus I built my group virtually from scratch,” he writes.

In 1993, operations were definitively closed at the Osasco unit, the largest company plant in all Latin America which at the height of production had almost 2,000 employees; it was demolished in 1995 for construction of a Walmart superstore and a Sam’s Club, leaving behind hundreds of sick people and a large environmental liability, to be discussed further on. Sick former employees began to meet starting in 1995 and founded the Brazilian Association of People Exposed to Asbestos (ABREA) in 1996, inspired by the Associazioni Esposti Amianto (AEA) in Italy.

In 1995, Eternit took 100% control of the Precon company in Anápolis, Goiás. And in 1997, it acquired complete control of SAMA, which in 2006 became SAMA – S.A. Minerações Associadas, removing the main operation (asbestos mining) from its trade name and becoming a privately held business corporation.

At the end of the 1990s, Saint-Gobain abandoned the use of asbestos, following the prohibition in France, and sold its Eternit stock. Together, Brasilit and Eternit, in the ETERBRAS joint venture, keeping their respective trademarks, controlled 55% of the roofing market in Brazil for a decade and, from then on, became competitors and got involved in a violent dispute for leadership of the asbestos-cement roofing market, even trading accusations and insults against each other in the media.

At that point, Eternit was nationalized and right away it became state-owned since its preferred shares were held

The Osasco Eternit plant as it was at the time of its closure in 1993. Photo: Eternit periodical "O Telhadeiro."

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9 Ibid.
by the Central Bank employees’ pension fund (CENTRUS) and the BNDES (National Bank of Social Development) social participation fund. As time passed and the company was revitalized, these funds were withdrawn and, since then, Eternit has become the absolute leader of the roofing market with its shares traded on the São Paulo Stock Exchange (BOVESPA). With this injection of funds from both state bank funds, the decline in asbestos production by SAMA, that had been observed from 1998 to 2000, due to laws prohibiting its use in several important states and cities of the country, was reversed and the sector had a chance to rebuild itself, contradicting the most pessimistic corporate predictions which expected a complete and imminent collapse in the use of asbestos in the country.

Although it had lost the market for water tanks and pipes for transport of drinking water and wastewater pipes to the plastics industry in 1990, this presented the company with a new challenge, forcing it to diversify and produce high density polyethylene tanks. Since then, Eternit has been gradually incorporating other companies in the civil construction production chain, including those in the sanitary ware (2008) and concrete roof tile (2010) markets.

With this, from 2006 to 2010, the number of shareholders rose from 1,600 to 6,000, according to the company’s website.11

Upon its “withdrawal” from the asbestos business, the Swiss Eternit left an immense social and environmental liability in Brazil, for which it did not spend a dime either to compensate the victims or for environmental rehabilitation of the degraded areas. It left this initially to its successor-in-interest, the transnational Saint-Gobain group, and later, with the exit of the French, to the recently founded and nationalized Eternit S/A, which became and will be held answerable for this tragic and troublesome inheritance. While it ran the company, the Swiss group never recognized nor officially informed the health authorities of any case of occupational illness caused by asbestos.

Social Responsibility?

The proof of Eternit’s irresponsible behaviour in Brazil, was the fact that in 1987 the physician in charge of occupational health for Eternit admitted during an official inspection by the GIA (Interinstitutional Group on Asbestos of the Federal Ministry of Labor and Employ-
ment) of the Osasco plant, that he knew of six cases of asbestos-related diseases. Furthermore, it became clear that none of these cases were reported to either the relevant Brazilian health or social security agencies, as required by law, due to a decision of Eternit's headquarters office in Switzerland. In 1996 this same physician, now retired, confessed that he had dealt with many such cases which were never reported. The order, which came directly from Switzerland, was that the cases of workers who showed signs of asbestos diseases would have to be filed individually by their own lawyers with the courts. Such were the policies of “social responsibility” at Eternit in Brazil!

Before the inspections made by Ministry of Labor and Employment inspectors, a review of Werner Catrina's book *Der Eternit-Report* from 1985 by Daniel Berman and Ingrid Hoppe had already mentioned the fact that “the Eternit company doctor had already discovered three cases of asbestosis, but he admitted that 32 other workers were suspected of suffering from pulmonary fibrosis. This physician denied the existence of cases of mesothelioma and lung cancer, and argued that it was unlikely that such cases would occur because of high worker turnover at the factory, which had the effect of limiting long periods of exposure to asbestos dust. He did admit, however, that Eternit only began to carry out appropriate medical examinations and keep accurate medical records in 1978, and for this reason the total number of cases which occurred from 1939 through 1978, would always remain unknown.”

The first company laundry only began operating in February 1989, at the Osasco plant, and the Telhadinho periodical12 announced that the company was studying "possible locations to install laundries and equipment for each of the other plants in the group". Concern with contaminated clothes at the factory began only at the end of the 1980s. Before then uniforms were washed at home mixed with the clothes of the employees' families.

Waste, before these GIA inspections, was frequently donated to employees and to the municipality of Osasco for the pavement of roads, yards and sidewalks or was even sold as raw material for other activities like strengthening materials, mainly plastics, for the manufacture of hangers and ribbons for packages, as was found in the N.J. Embalagens company, although Eternit had officially informed the public health authorities of the country that it had a zero waste cycle;13 in other words, all waste in the production process was reused by the company itself, avoiding external contamination.

Filters from the Hatschek machine and from the ventilation system reused by employees for curtains and rugs. Photo by Dr. Vilton Raile.

The product warning labels were not sufficiently clear and even less indicative of the risks associated with asbestos exposure, especially that of contracting cancer:

"I was a member of the Internal Committee for the Prevention of Accidents (Comitê Interno de Prevenção de Acidentes — CIPA)”, says Eliezer João de Souza,14 President of ABREA. “When I worked at Eternit I took some courses on asbestos-related diseases, but I found out only in 1995 that asbestos was carcinogenic. Every two years we had chest X-rays. They never told us anything about the results. The company doctor knew what was happening but hid everything from us. I myself had pneumonia and other chest diseases and didn’t even know the cause."

The Social Debt

The weekly magazine *Epoca*,15 of 10/30/2003, in an article titled “He donated US$ 2.2 billion. Swiss magnate passes shareholder control of his companies to a philanthropic foundation that operates in Latin America,” while effusively celebrating this donation, couldn’t ignore the environmental liabilities and the poisonous legacy which the Eternit group left in Brazil and wrote:

“Those left behind to run the factory were workers like João Francisco Grabenweger. At 77 years of age, 38 of them devoted to Eternit, Grabenweger can barely draw enough breath to walk. In exchange for lungs ruined by asbes-

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tos, he earns $1,308 U.S. dollars\textsuperscript{16} a month in retirement income. A resident of the state of São Paulo, descendant of an Austrian family, he remembers the young Stephan Schmidheiny, who would chat with him in German. ‘His major sin was failing to shut down the plant so that nobody else would have contact with the asbestos,’ regrets Grabenweger.”

On December 19, 2003 the same João Francisco Grabenweger wrote a letter to Schmidheiny in German in which he told his former “workmate” at the Eternit plant in Osasco about his pain and anguish. Following are some of the most gut-wrenching passages from Grabenweger’s letter:

“Do you remember, sir, the time you spent as a trainee in your Osasco factory in Brazil where you worked in the departments, and did the work of both ordinary laborers and foremen? At that time I was assigned by factory management to work together with you throughout the factory, because I was fluent in German. I am Austrian descendent and my name is João Francisco Grabenweger. I don’t know whether you still remember this humble worker with whom you used to talk about your passion for underwater diving, mostly in the Mediterranean Sea. I went with you, personally, to the Butantã Institute, which is world-famous for its collection of live snakes and for its production of anti-venom serum against snakebites and other vaccines.

My life as a worker at Eternit’s Osasco plant began in 1951 and I worked there until 1989. I think I may be the only survivor of that period, even though my lungs are damaged by a progressive and irreversible asbestosis, with diffuse bilateral pleural thickening and bilateral plaques in the diaphragm.

I am one of a group of 1,200 former Eternit employees who are asbestos victims. We have joined together in the Brazilian Association of People Exposed to Asbestos (ABREA), which, in a great display of courage and dedication, fights both in Brazil and internationally for the banning of asbestos and for compensation for asbestos victims.

Allow me to ask you a question, sir, did you ever see any articles about the victims from the Nazi concentration camps? Those who survived are receiving very substantial monetary compensation with all the rights which can possibly exist. When we former employees worked at Eternit we were kept completely ignorant about the fact that we worked in an asbestos concentration camp. Being good workers, we helped out to the best of our abilities, with total pride and dedication, in building the asbestos-cement empire of the Schmidheiny family. But what did we get from “Mother Eternit?” What we got was a bomb with a delayed action fuse which had been implanted in our chests.

Perhaps you are unaware, sir, but we victims of Osasco, those of us who are still alive, constitute a sort of job guarantee for those who defend the existing Eternit company against its former employees, humiliating us on a daily basis with ridiculously small offers which they call “compensation,” which are especially insulting to those of us with white hair and failing health.

I sincerely hope that I will receive a reply from you as soon as possible, because it always seemed to me that you and your family were not informed about much of what took place in the factories, and also because you seemed like a very caring and respectful person, which has been confirmed for me by the Êpoca Magazine article written by Alex Mansur, and so I beg of you, in the name of the asbestos victims of Osasco, to help us secure the justice which we have dreamed of for those who gave their lives for you, sir, and for your family and your business.”

João Grabenweger died four years later, on January 16, 2008, without ever having received an answer to his appeal to Schmidheiny, his former co-worker, a letter he had waited for until the last day of his life. Eternit offered him US$ 27,241\textsuperscript{17} to drop his legal suit for compensation.

**ABREA: Visibility for those sick due to asbestos, social recognition and compensation**

Eternit had expected that asbestos-injured workers would pursue individual legal actions for compensation, a situation which would attract minimal public and press attention. The last thing the company wanted was for a group of victims to pursue a class action, news of which might impact negatively on Eternit's public image and share value. The fact that mesothelioma had such a long latency period and that many sick workers

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\textsuperscript{16} Exchange rate of 1/6/2012.

\textsuperscript{17} Ibid.
moved away from Osasco once they were unable to work ensured that the victims’ plight remained invisible. The social-environmental-health tragedy which the company had caused was, for so many years, buried alongside its victims. In 1995, two years after the company closing in Osasco, former employees began to get together and collectively organize a struggle to obtain recognition of asbestos diseases; in search of treatment and compensation for the damage caused, as well as for the prohibition of asbestos in Brazil – they founded ABREA.

The company’s reaction was immediate and it began to organize parties to attract former employees and their families for the purpose of convincing them to sign extrajudicial settlements for insignificant amounts along with lifetime health insurance, which the company would manage itself, requiring them to waive any future legal claims. These settlements provided for the termination of the health services in case of company bankruptcy or asbestos prohibition in Brazil, making these former employees and their families hostages to the continued use of asbestos.

Eternit confirmed to the press that to date it has entered into 3,000 extrajudicial settlements with its former employees of the group’s various asbestos-cement plants and the asbestos mine of its subsidiary (SAMA).

The Public Ministry of the state of São Paulo, unsatisfied with this situation of settlements, in *litis consoritium* with ABREA, proposed an *erga omnes* class action suit similar to that which was developed in Turin. This suit requests compensation for 2,500 victims, for the material and moral damage suffered, and demands lifetime medical supervision and health treatment for those who are sick. Unfortunately, due to the slowness of the Brazilian legal system, this suit is still dragging on without resolution, in spite of a favorable first instance ruling finding Eternit responsible for having injured these 2,500 victims, followed by an appellate court ruling, unfortunately against, absolving the company, accepting defense arguments that it always complied with Brazilian labor legislation, even though it was insufficient due to the state-of-the-art and was only rewritten based on ILO Convention 162 in 1991, and on the belief that there was no subjective evidence of its guilt. Appeals to higher courts can still be made, but these can take many years to be reviewed. By that time, many of the victims will have died.

With the change of “competent jurisdiction” from the civil to the labor sphere as a function of Constitutional Amendment 45 of December 2004, there has been an acceleration in decisions on compensation suits which previously took up to 12 years or more to be completed and which are now being shortened to 5 years, on average, bringing these poor asbestos victims hope that they might live to receive their compensation.

Another visible benefit of this change is the suit success rate which went from 10.8% in the civil sphere to 75.6% in the labor sphere. A substantial increase in the values that are being awarded has also been observed in recent legal decisions, on average, 1,000 to 2,000% higher than the meager amounts awarded in the 1990s.

**Environmental Liabilities**

The photos below speak for themselves and illustrate Eternit’s irresponsibility with regard to its environmental liabilities.

January 2012

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14. Eternit and the “Double Agony” of Asbestos Victims in the Netherlands

Bob Ruers

The first known victim of asbestos in the Netherlands was recognised in 1930. The link between asbestos and lung cancer was confirmed in 1942 and the first victims of mesothelioma appeared in the medical literature during the 1950s. It was, however, 1984 before a worker affected by an asbestos-related illness claimed compensation from his employer. Since 1984 there has been an unbroken series of court cases brought against employers and producers. To this day victims of asbestos are forced to go to court to receive recompense for the damage caused to them. Below, I give a short summary of these developments, appropriately described as “the double agony” – the legal agony on top of the medical.

The Belgian Eternit Group

Even before 1920, the Belgian Eternit company (Belgische Eternitbedrijf), which had at its disposal Hatschek’s Eternit patent, was a major competitor of the sole Dutch asbestos firm, which also held rights to the Hatschek patent, the Amsterdam company known as Martinit. By 1928, Martinit could no longer stand up to Eternit Belgium and in 1930 it was taken over by its Belgian competitor. A large proportion of Martinit’s production of asbestos cement moved to Belgium and from there Eternit Belgium exported its products on a large scale to the Netherlands. In 1937, in order to serve the Dutch market, Eternit established a new asbestos cement factory in the village of Goor. Eternit Goor quickly grew to become the biggest asbestos cement company in the Netherlands.

Two years earlier, in 1935 in Harderwijk, the Salomons brothers had founded the asbestos cement firm Asbestona. Initially, Asbestona strongly resisted the establishment of the rival Eternit factory in Goor, but a few years later the Emsens family, which owned the Belgian Eternit company, surreptitiously took over the Salomons brothers’ Asbestona shares. After the war the Emsens family also took over the Oosterhout-based Nederlandse Fabriek van Asbestproducten (Dutch Asbestos Products Factory), “NEFABAS,” where the principal activity involved the use of asbestos paper and cardboard for the production of insulation material. Because Eternit Belgium at the same time also took over the small asbestos cement factory Ferrocal, from 1950 the whole of the asbestos cement market in the Netherlands was in the hands of the Belgian Eternit group. Since then all important decisions regarding investment, expansion and company closures in the Dutch asbestos/asbestos cement industry have been taken in Eternit’s Brussels head office.

Asbestos victims of Eternit

The first known victim of asbestos in an Eternit factory was a Mr Christiaanse, a worker in Eternit’s Amsterdam asbestos cement factory, in 1956. He had been hired ten years earlier as a machine operator. According to an investigation conducted by Eternit in 1951, Christiaanse worked in “a practically dust-free environment,” but in 1956 he was confirmed as suffering from asbestosis. In 1972, asbestosis was confirmed in a NEFABAS employee. From 1945 to 1972 he had worked at NEFABAS in Oosterhout and there suffered prolonged exposure to asbestos. In 1975, both asbestosis and lung cancer were confirmed in an employee of Eternit Goor, and in 1976 he died as a result of these illnesses. Mesothelioma was recorded in three further workers at Eternit Goor in 1975, 1981 and 1982, respectively. In none of these cases did Eternit publish any information outside the firm. None of the victims was able to establish Eternit’s liability. In view of the long latency period of asbestos-related diseases, it is worth mentioning that before 1967 it was not possible under Dutch labour law for a worker to hold his or her employer responsible for an occupational illness and on that basis to claim compensation.

First legal cases against NEFABAS and Eternit

In the mid-1980s, as a result of a number of complementary factors, a sea change occurred in the position of asbestos victims in the Netherlands. For the first time...

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2 Between 1945 and 1950 the Van Breevoort brothers also worked at Eternit Amsterdam in the manufacture of asbestos cement fittings. In 1998 one of the brothers was diagnosed with mesothelioma, and in 2001 this was also diagnosed in the other brother. Both held Eternit responsible and were awarded compensation.
scientists came forward who took the side of the victims and put their expertise at their disposal. Previously the scientists were almost always employed by, or otherwise in the pay of, the asbestos industry. A second factor was the decision by a former employee of NEFA-BAS, who was suffering from asbestosis, to take his former employer to court. That meant that the asbestos industry, which enjoyed huge influence over government and had long met with a great deal of sympathy for its views, would for the very first time be held responsible before a judge for its policies, for working conditions within the industry and for health and safety measures. Importantly, the first organisation of and for asbestos victims was established; these same victims received significant political, organisational and financial support from the Socialist Party (SP). In addition, state-financed legal aid provided encouragement for the asbestos victims.

With the SP’s support, three widows who had lost their husbands to asbestos-related diseases were together the first to take Eternit Goor to court. At the same time, an employee of the Vlissingen shipyard De Schelde, who had been exposed to asbestos between 1949 and 1967, went to court with the support of his union to claim compensation for the asbestos-related illness mesothelioma. The ex-employee’s case led to a decision in the High Court in his favour, considerably strengthening the legal position of those affected by asbestos-related diseases [1]. Among the ruling’s consequences was a decision by Eternit Goor to pay compensation to the “three widows.” The De Schelde worker was also successful, the High Court ruling in his favour in 1993, with which decision the Court accepted that mesothelioma is a disease which can be contracted through the inhalation of asbestos dust, that it can be provoked by a relatively short exposure – “through the inhalation of one asbestos crystal” – and that the incubation period amounts to between twenty and forty years [2].

**Organisation and Tactics of the Asbestos Victims**

In 1995, on the initiative of the SP, the Asbestos Victims’ Committee (CAS) was established. This committee was an immediate success and answered a pressing need: in the first year after its establishment 600 victims and their relatives went to the CAS for advice and assistance.³ With the support of the CAS, financial aid from the SP and the assistance of scientific experts, numerous legal actions were taken against employers, of which Eternit was one of the most important. Developments in the administration of justice were, given the problems occasioned by the lapse of time and thus the Statute of Limitations, generally positive. In ever more cases the employers were held liable and ordered to pay compensation for both material and non-material damages. The amount awarded to victims of mesothelioma in the 1990s was in the region of €40,000, increasing after 2000 to around €50,000. The position of asbestos victims attracted growing attention in the media, while the SP continually ensured that the whole spectrum of asbestos problems and the issue of the victims remained on the agenda. In doing so the SP recorded a number of achievements, including ensuring that the Statute of Limitations, the effects of which were for victims of asbestos extremely unjust, would be reformed.

**Five Categories of Eternit Asbestos Victims**

Victims of asbestos-related illnesses – asbestosis, lung cancer and mesothelioma – can in practical terms be divided into various categories depending on the nature of their exposure and the degree to which compensation for damages can be claimed in a court of law. I have distinguished five groups, which I shall now briefly illustrate group by group.

1) **Employees and Ex-employees**

The first and also biggest group of asbestos victims has always consisted primarily of employees and former employees of industries that process asbestos, asbestos products, and materials containing asbestos, and this continues to be the case. The insulation industry played a major role in this in the 1950s, followed by shipbuilding and later by the asbestos cement industry and the building trade. Because until 1967 it was not possible, on the basis of the Ongevallenwet (Accident Law), to hold an employer liable, claims based on occupational sickness were not heard until that year. From the 1980s onwards, however, the number of court cases grew rapidly. Against the claims of victims who had been exposed to asbestos in Eternit’s factories, the company defended itself with the argument that it had always behaved “as a good employer,” that before 1970 the firm could not have known of the risk of cancer associated with asbestos, and that after 1970 it had taken every appropriate safety measure. Eternit also cited the fact that until 1990 there had been no scientific consensus regarding the danger from white asbestos. In most instances, the asbestos victims succeeded in court, with the help of scientists, in refuting these arguments. After Eternit had lost a number of court cases, the firm changed tack and declared itself prepared to pay compensation to all employees and former employees of its factories who suffered from an asbestos-related disease.

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³ The number of victims of mesothelioma in the Netherlands had by 1969 reached 70 per annum, by 1990 270 p.a., by 2000 390, and by 2009 470. This means that proportionally the Netherlands belongs to the top five countries with the highest incidence of mesothelioma.
2) Family Members and Co-habitants

At the beginning of the 1990s two further categories of victims of Eternit asbestos were evident: those who had shared living space with employees or former employees of the firm’s factories, and members of their families. These were exposed to asbestos via the work clothes of their husbands or fathers who had worked with asbestos in these factories. In the first instance the company refused to pay such victims any compensation. The most important of Eternit’s grounds for defence was the position that, at the time, the company could not have foreseen that exposure via clothing was dangerous. So these victims too were obliged to go to court. Among the first to do so were Mr and Mrs Van Gemmert, who both contracted mesothelioma early in the 1990s. Mr Van Gemmert (1924-1993) was exposed between 1946 and 1982, during which period he worked at the Eternit factory in Goor. His wife (1921-1994) was exposed during the same period through contact with her husband’s work clothes. Following a long court case, Eternit agreed to accept responsibility and paid the compensation demanded.4 The second, comparable instance concerned Marino Grootenhuis, born in 1964, who was diagnosed with mesothelioma at the beginning of 1996, when he was 32. He turned out to have been exposed via the work clothes of his father, who in 1966-67 and 1976-77 had worked for relatively short periods at the Eternit factory in Goor. Marino Grootenhuis died in 1997. Once again, in Grootenhuis’s case, Eternit contested liability in court, but to no avail. Soon after this, Eternit altered its policy and announced that the company was prepared to pay compensation to any “co-habitant” of an employee or former employee confirmed as suffering from mesothelioma.5

3) Environmental Victims

Between 1945 and 1975 the asbestos cement company Eternit Goor and its sister firm Asbestona gave away, free of charge and on a large scale, factory waste containing asbestos to people living in their factories’ vicinities, which the recipients used to pave and level up yards, roads, paths and gardens. In this fashion, to a radius of some 25 kilometres around the factories, several thousand locations came into being where dangerous industrial waste could be found, without any warning ever being given from Eternit and Asbestona to the users that they could be in danger. A 34-year old man from the neighbourhood of the Eternit factory in Goor, who in 1991 died from the results of mesothelioma, was the first known victim of the Eternit waste. In his youth he had often ridden his motor cycle over roads reinforced with this waste. A few years later, more victims of the waste emerged, and Eternit for the first time paid compensation for this type of exposure; but without admitting liability and with the proviso that the payment be kept secret. The recipient was a woman of 38, who had come into contact with the waste as a child. In the same year, mesothelioma was confirmed in a 44-year-old woman who had been exposed to Eternit waste from early childhood. Eternit refused to admit liability, after which the woman was forced to take legal action against the firm.6 In 2003, the court dismissed her claim, arguing that Eternit had not acted unlawfully, because in the period from 1945 to 1972 the firm neither knew, nor could it have been expected to know, of the potential dangers attached to the practice of making asbestos waste available for surfacing roads. Another female victim of mesothelioma from the immediate vicinity of the Eternit factory in Goor was exposed to the waste in the farmyard of her home between 1960 and 2000. In 2000 she died, at the age of 62. She had, together with her husband, during the period 1960-1975, regularly used Eternit waste for paving paths and yards on their farm. After his wife’s death, the widower brought a liability action against Eternit, but Eternit denied responsibility. When the case was heard in 2006, the court in Almelo dismissed the claim, but the Appeal Court in Arnhem ruled in 2007 that Eternit had indeed acted unlawfully:

“…in, from 1967 to 1970, without any warning or indication regarding the danger attached to the use of (freely released) asbestos (and/or processing and/or wear and tear), regularly and in an uncontrolled fashion distributed quantities of asbestos cement waste.”

Eternit were ordered to pay compensation for damages to the widower. The company acceded to the ruling and paid the damages.

In 2003, epidemiologists Burdorf et al conducted research into the occurrence of pleural mesothelioma amongst women in the vicinity of the Eternit factory in Goor. They found five cases of mesothelioma amongst women who had suffered no exposure either in paid employment or in their housekeeping tasks. That number indicated a mortality rate of over ten times the ex-

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4 In 2008, mesothelioma was also confirmed in their daughter G. van Gemmert, who was born in 1955. She established Eternit’s liability and received compensation. In June 2008 she died, at the age of 52.

5 After 1994, 30 mesothelioma victims were diagnosed in the category “co-habitant”; in 8 cases these were family members of Eternit employees.

6 Because of the fundamental nature of the case, she received financial support from the SP.
pected incidence [3]. In a more extensive investigation a few years later, Burdorf et al looked into whether “a disease cluster of 22 cases of pleural mesothelioma amongst women in the period 1989-2002” was linked to sources of exposure in the environment, such as asbestos-reinforced roads and yards [4]. The researchers confirmed that in ten women in the region of Goor, the occurrence of pleural mesothelioma could be attributed with certainty to exposure in the environment, while in four more environmental exposure was the most likely cause of their disease. On the basis of this finding the researchers concluded that environmental exposure to asbestos in the area around Goor was the most significant explanation for the “sharply increased incidence of pleural mesothelioma amongst women” and that with an equivalent risk to men the result of asbestos contamination in the area in the following 25 years would be an additional two cases of pleural mesothelioma per annum.

In 2005, Eternit decided that, in respect of this category of victim also, they would no longer offer any defence and instead declared themselves prepared, under certain conditions, to pay compensation to this group.

4) Consumers and the Self-employed

The fourth category of asbestos victims consists of consumers and the self-employed. The first victim of mesothelioma in this category was a Mrs Nieborg-Horsting, born in 1950, who was diagnosed with mesothelioma in 2002. In 1971, she was exposed for several months on her parents’ farm during the construction of a shed in which corrugated sheets containing asbestos were used as a roofing material. The sheets came from Eternit. Mrs Nieborg’s claim against Eternit was upheld, on the grounds, according to the court, that Eternit should in 1971 have warned users of its asbestos sheets of the danger attached to their intended use. The ruling was confirmed on appeal. On further appeal, however, the Supreme Court quashed the ruling of the court on Statute of Limitations grounds. The Court of Appeal in Hertogenbosch ruled on referral that Eternit’s Statute of Limitations-based defence was unacceptable as it was in conflict with reasonableness and fairness [5].

Mr Wolting, a farmer born in 1950, in 1979 built a large shed on his farm, using 669 corrugated asbestos cement sheets as roofing material, the sheets coming from Asbestona (later known as Nefalit). This resulted in exposure to asbestos. In 1999, a lung specialist diagnosed mesothelioma in Wolting, who died from the illness a year later. After his death, Wolting’s heirs brought a liability action against Nefalit, but the firm denied responsibility. The court’s opinion was that knowledge of the dangers to health of materials containing asbestos was already available in 1970-71 within the circle of producers to which Nefalit belonged and that such was certainly the case in 1979. For that reason, in 1979 Nefalit might have been expected, in distributing corrugated asbestos cement sheets, to have warned the public, and certainly those such as Wolting involved with handling the sheets, of the risks to health. The court concluded that Nefalit had acted unlawfully towards Wolting and his heirs and had thus become liable for damages. The Appeal Court of Arnhem confirmed the ruling in May, 2010.7

Another example of exposure to asbestos in relation to a consumer was the case of Mrs Hoeve, born in 1939 and hailing from Amsterdam. In 1972, alterations were made to Hoeve’s home for which around 30 square metres of sheets containing asbestos were used. The sheets were trademarked Nobranda and produced by Asbestona (later Nefalit). The work resulted in Hoeve being exposed to asbestos. In January, 2007, she learnt that she was suffering from mesothelioma, for which she held Nefalit responsible. Nefalit contested Hoeve’s claim, taking the position that:

(a) Hoeve’s claim was statute-barred through too much time having lapsed;
(b) it was not certain that mesothelioma had only one cause;
(c) Hoeve had undergone only an extremely limited exposure during the work that she did or had done in 1972;
(d) Nefalit did not know and could not have known in 1972 of the potential risk of an exposure to asbestos of extremely short duration, and
(e) in 1972, there had been no legal duty to provide a warning with its corrugated asbestos cement sheets.

The court’s judgment was that Nefalit’s “limitations” defence was unacceptable on grounds of reasonableness and fairness and must therefore be rejected. To this the court added these remarks:

“It must be judged whether Nefalit at the time these sheets were put on the market, in 1972, was aware, or should have been aware, that serious health risks existed in relation to the working of sheets containing asbestos for those using the

7 Gerechtshof (Court) Arnhem 11 May 2010 concerning Nefalit/Schraa, Wolting. In this instance Nefalit, subsidiary of Eternit, had already taken the case to the High Court.
product, of which warning should have been given. A producer does after all in general incur blame should it not take those measures which may be demanded of a careful manufacturer in order to prevent a situation in which the product it brought on to the market causes damage in normal use for the purpose for which the product is intended. For side effects such as a serious health risk a warning must be given, even if the frequency at which the risk arises is low.”

Nefalit’s other arguments were also rejected by the court. Thus, the court concluded that Nefalit had acted unlawfully in relation to Hoeve and ordered the firm to pay damages to her. Nefalit resigned itself to the verdict.8

5) Liability of Manufacturers

Finally, a separate group of asbestos victims are those workers who have become ill as a result of exposure in their work, but where their former employer can no longer be held liable because the firm no longer exists, cannot be located or has gone bankrupt. For these workers there exists in the Netherlands the possibility to call to account not only their former employer but the producer of the asbestos-containing materials with which they worked. In order to do so they must demonstrate that they became sick as a result of the use of these materials and that the producers of the materials have neglected to issue a warning concerning their use, despite the fact that such a warning might be expected from the producer.9 In March, 2010, the court at Gravenhage found in favour of a certain Mr. Langezaal and against Eternit, as producer. His own employer could not be held liable by Langezaal, who had worked as a carpenter between 1956 and 1967, during which period he was exposed to asbestos, because the firm which employed him no longer existed.

International Solidarity

In many of the legal cases discussed above, in addition to the extensive scientific documentation and support of Dutch experts, the knowledge and information supplied by foreign experts in the area of asbestos have played an important role.10 It is good to be able to take this opportunity to record the fact that through this unselfish international mutual support many victims of asbestos have been able to realise a stronger position in relation to the internationally organised asbestos industry.

March 2011

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9 Verdict of the ‘s-Gravenhage court 3 March 2010 concerning Langezaal/Eternit. Eternit appealed this verdict.
15. ETERNIT IN FRANCE
Marc Hindry

A Brief History

Eternit produced and sold asbestos-cement products in France for 75 years – from 1922 until 1997 (the year of the French ban). For much of this time, asbestos-cement production and marketing in France were controlled by a cartel in which Eternit acted in conjunction with the French multinational Saint-Gobain (through its subsidiary Everite). The first Eternit plants were built in 1922 at Thiant and Prouvy (twin cities in the North department) followed by factories at Vitry-en-Charollais (Paray-le-Monial, Saône-et-Loire dép), Vernouillet (Triel, Yvelines dép), Caronte (Bouches-du-Rhône dép), Saint-Grégoire (Rennes, Ille-et-Vilaine dép) and Terrasac (Albi, Tarn dép). While the Prouvy and Caronte factories have been shut down, the Vernouillet site houses the head office of the Eternit holding company; the four other factories were converted (in 1996-97) to the production of non-asbestos fibro-cement.

The apogee of the asbestos-cement empire occurred in the seventies, when Eternit was employing more than 5000 people and producing more than 600,000 tons of asbestos-cement products per annum. In 1970, for example, the levels of employment and production for the various plants were: Prouvy and Thiant 2360 and 260,000 tons; Vitry-en-Charollais 1182 and 180,000 tons; Caronte 668 and 72,000 tons; Saint-Grégoire 724 and 130,000 tons (the factory in Albi was not opened until 1971).

Until 1965, Eternit also operated the Canari asbestos mine, on the coast of Corsica, where around 300,000 tons of asbestos were extracted. Eternit has left on this site a true ecological disaster; part of the bay has been filled with asbestos waste.

The French Eternit branch also developed asbestos-cement production in what were then French colonies. Factories were established in Senegal (company Sénac), Algeria (subsequently shut down, Algeria having reduced then banned asbestos use) and Indochina (Vietnam). Eternit also participated in enterprises in Morocco (company Dimatit) and Tunisia (company Sicoac).

“Controlled Use” According to Eternit

Eternit has enormously contributed to misinformation about the hazards of asbestos. It was clearly one of the pillars of the “Chambre Syndicale de l’Amiante” (Union of Asbestos Producers) and the “Association des Producteurs d’Amiante-ciment” (Association of Asbestos-cement Producers). In the sixties, these groups recruited the Cabinet Valtat (the public relations firm “Communications Economiques et sociales” established by Marcel Valtat) to organize the promotion of asbestos, publishing brochures with telling titles like “Vivre avec l’amiante, fibre de la terre” (living with asbestos, earth fibre). During the eighties, the hazards and effects of asbestos were becoming increasingly difficult to hide so the Cabinet Valtat created (officially in 1984) a formidable lobbying tool they christened “Comité Permanent Amiante” (Permanent Asbestos Committee (CPA)). From 1984 until 1996, the year that ANDEVA was created, the CPA essentially determined all government decisions on asbestos. It succeeded in gathering together asbestos manufacturers, ministry representatives, medical doctors and trade union representatives in a structure financed by the asbestos industry in order to promote “controlled use of asbestos.” In 1993, the Eternit representatives in the CPA were H. Leclercq director of the Thiant factory and B. Votion.

The efforts to promote the myth of controlled use were unfortunately not matched by initiatives to improve workers’ safety and environmental care. Indeed, one could justifiably claim that if the money invested in propaganda had been used for safety and prevention we would today witness fewer casualties due to Eternit asbestos. The CPA brochures praise the marvellous efforts of members of the asbestos industry in France to improve safety in their plants. As an ironical detail and fruit of clever lobbying, in 1985 the French Ministry of Environment awarded a clean technology prize to Eternit!

Reality sometimes strikes back: in 1995 the national TV channel France 2 managed to film an ordinary worker’s day in the Thiant plant (H. Leclercq’s plant) and viewers discovered that bags of raw asbestos were opened

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2 In 1993, Bernard Votion is listed as a “qualified person” but in earlier publications of CPA he appears as belonging to Eternit.
with a knife, then manually emptied by a worker into a mixing machine; the worker wore no respiratory protection, the only means of dust removal being an aspirator device installed above the mouth of the mixer. A physician working in the nearest hospital, located in Denain, estimated his service was witnessing around 30 new mesothelioma cases every year.

**Eternit and French Justice**

Despite a number of challenges, to date Eternit has remained essentially untouched by justice in France.

On 18th December 1997, the Court of Appeal of Mâcon ruled Eternit guilty of “faute inexcusable” (“inexcusable fault”), concerning the diseases of several workers from the Paray-Le-Monial factory. Since then, Courts of Appeal have sanctioned Eternit for more than a thousand occupational disease incidences, including hundreds of deaths. Each of the Eternit plants has been condemned. One should observe though that, due to a flaw in the law, Eternit took the blame but hardly paid any compensation; in fact, most of the damages were settled by the health insurance system. Nevertheless, the Fund for Indemnification of Asbestos Victims (FIVA) has started a number of recusory actions concerning domestic and environmental asbestos victims of the Eternit plants.

In 1996, ANDEVA filed, in a civil suit, a “plainte contre X” (“complaint against unknown persons”), for involuntary injuries and homicides, abstention délictueuse (willful failure to act to protect persons in imminent danger) and poisoning; this suit was aimed at all persons responsible for the asbestos health catastrophe: the asbestos product manufacturers, the public health and labour authorities, the medical doctors that had collaborated in the process.

Although some fifteen years have elapsed since the ANDEVA suit no individual has been held responsible for the crimes listed in the complaint. However, In November 2009, M. Joseph Cuvelier, son of the founder of Eternit France, director of the Eternit asbestos-cement group from 1971 till 1994, came under investigation by juge d'instruction (examining judge) Marie-Odile Bertella-Geoffroy for “involuntary injuries and homicides.” He is mainly accused of having failed to implement safety and protection measures for workers exposed to asbestos dust in Eternit factories. These enquiries are still ongoing.

The Lives Destroyed by Eternit.

Figures cannot describe the sum of dramas, personal tragedies, rage, despair, resignation and humilation that resulted from Eternit’s carelessness, mendacity and greed. The testimonies and comments below give some idea of the harm the company has inflicted.

CARONTE. Michel Salard worked for 22 years in the Caronte Eternit plant, in Port-de-Bouc, near Marseille. As a result, he now has pleural plaques. His wife Zoé, used to wash his working clothes, covered with asbestos dust; she shook the dust off before washing them. Today she suffers from mesothelioma which was diagnosed in 2008. He tells their story:

“I worked 22 years at Eternit Caronte with asbestos. Zoé, my wife, washed my working clothes; 29 years after the plant was shut down, we discovered she had mesothelioma.

Asbestos dust was everywhere in the plant; when we were re-cutting the broken asbestos-cement tiles, when we cleaned the machines and the air shafts on Saturday … the ventilation system was insufficient.

Today there are many victims among the workers but also among their families.

Over the years workers’ union delegates and the hygiene and safety committee requested that our working clothes be washed by our employer. They constantly refused, arguing that *Eternit is not a laundry …*’

So it was my wife who washed my clothes covered with the dust brought from the plant. She used to shake them before washing them. She breathed asbestos fibres day after day, month after month, year after year, for 19 years. Today she is very seriously ill. She is not the only one, I know of three wives of Eternit workers who fell ill. There are certainly others.

The FIVA has started a recusory action against Eternit at the civil court of Aix-en-Provence, invoking article 1384 from the Civil Code. The action is being examined by the court.

The ‘inexcusable fault’ of Eternit has been many times recognized by courts but Eternit has suc-

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3 Testimony published in the Andeva bulletin No. 34, January 2011.  
4 The Fund for Indemnification of Asbestos Victims (FIVA) has awarded compensation to Zoé Salard.  
5 Article 1384 from the French Civil Code says essentially that a person is responsible not only for the damages s/he causes directly but also for the damages caused by persons under his/her responsibility and for products in custody.
ceed in escaping financial punishment, exploiting administrative negligences from the Social Security Organisation.”

THIANT. In the centre of the photo above is pictured René Delattre, who died of mesothelioma in 2007; immediately behind him is Robert Wuilbeaux who died of mesothelioma in 2005; both worked at the Thiant factory and were very active in the Thiant branch of the victims association: Comité Amiante Prévenir Et Réparer (CAPER) (Committee for Asbestos Prevention and Compensation).

Mireille, Robert’s wife, tells her story:

“My husband Robert Wuilbeaux started working at Eternit on the 26th of October, 1953 at the age of 16, in order to help support his family. He spent 42 years working there. He worked as a moulder for 30 years, before switching to hoist driver. In 1995, he went into pre-retirement, for a well-deserved rest.

In 1998, like all the employees having worked with asbestos, Robert received an appointment for an occupational medical check-up. He did not want to go, I had to push him.

In December 1999, he finally saw a pneumologist, had an X-ray taken, then a scan in January 2000. The results reveal pleural plaques. Three months later Robert learns that he has a 10% respiratory incapacity, due to the asbestos he inhaled all those years at Eternit. And progressively, asbestos gains territory and continues its slow destructive process.

From a 10% incapacity, Robert moved to 15% in September 2001 then 20% in March 2003. In October of that same year, comes the fatal diagnosis: Robert has developed pleural mesothelioma on the left side. He knew his days were numbered. From then on, it was not living but surviving. He knew what was going to happen to him because he had seen other colleagues die…

Hell started then: chemotherapy, repetitive pleurisies, more and more frequent draining. From January 2005, my husband had nodules which required irradiation, radiotherapy. Then, in April 2005, a new scan and, an ice shower, the diagnosis of lung cancer on the right side. Hospital again; he had oedema in the lower limbs and could not walk anymore. To try to cure this new cancer he received heavy chemotherapy which he barely stood. This therapy attacked his nervous system; he would tremble, faint, vomit. His whole body was aching: head, belly, legs. He could not even drink; we would refresh him with ice lollipops.

On 1st October 2005, Robert died. If hell is a virtual place, I can say my husband lived through hell and suffering; and I did too during those last months when I stayed by his side.”

PARAY-LE-MONIAL. Maurice Papillon started working at the age of 16, and worked 31 years at the Eternit plant in Paray-Le-Monial. He died of mesothelioma in 1986, at the age of 47. His wife Jacqueline tells her story:

“I will start on the 15th March 1986 … For some time, my husband had felt very tired, his body was aching and he had lost weight; this was the beginning of his Calvary! Having contacted a doctor and after a blood test, which of course was disastrous, he was hospitalised for more medical examinations, X-rays, scans, etc. First diagnosis: lung cancer! The doctor asked me to fetch the most recent X-ray from the factory for comparison. I'll be brief on the ‘sociability’ of the medical staff at the plant! I go back with my pain, knowing already my husband is seriously ill. Then to Léon Bérard [Hospital] for a complete examination; I meet a professor who tells me ‘Your husband is full of asbestos dust, with cysts specific to asbestos, he has the asbestos disease’ (all this was orally stated, I never had a written statement); he explains to me the disaster of this disease.

I was 39 and had never heard about this: what was asbestos, asbestos disease? Our life was never the same after those days, the descent though illness, anguish, fear of dying, suffering … during the last months Maurice lost 35 kilos.
Neither my children nor I will ever forget the physical degradation, the pain screaming each time we must look after him, his eyes where I read suffering and anguish, because he knew he was dying. ‘At the age of 47, it is hard to go’ were the only words of complaint I heard from his mouth throughout his illness. He did not wish to receive his friends: ‘later when I’ll feel better.’ [He wanted] to keep his man’s dignity. He died on the 5th of July 1986.

I lost my husband, my children lost their father, his mother lost her only son!

I was helped by a medical doctor who advised me to ask for an occupational disease acknowledgment. This I did, because by then I have a rage and a need to know the truth that will continue carrying me. In September 1986, the social security required an autopsy, after which the three doctor college from Dijon refuse [my application] because they claim he died from a digestive cancer. I rave; at that time there was no association to help me. I appealed and 2 years later, in 1988, a new college meets and declares the cause of the disease occupational. A door opened, it was a tsunami over Vitry [the town near the Eternit factory].

In 1995 the Paray-le-Monial [branch of] CAPER was created and I joined of course; our lawyers presented our first cases at the Social Security Court of Mâcon and jurisprudence emerges. The ‘inexcusable fault’ of Eternit is recognized; later in 2001 my husband’s case is finally won; ‘work to live and not to die.’

In my fight I was alone, distraught, a few times I wished to give up; I have been finger pointed and criticised, even by a doctor, because according to him I was doing this for money; but my pain, my sorrow, my family’s pain, what did they make of that?

I was a housewife, with 3 children, studies to pay, daily duties, who cared about that? I stood up, I fought, I have no regrets and today my fight continues for those to come, because asbestos still kills.”

August 2011

Bibliography


Postscript. Zoé Salard died November on 1, 2011, a month before the civil court of Aix-en-Provence declared Eternit guilty of exposing her to asbestos. The recusory action against Eternit is the first one for environmental or domestic exposure in France.

Asbestos widows march in Dunkirk; April 2005; accompanying the march are Robert Wuilbeaux (far left) and Mireille Wuilbeaux (light blue jacket); towards the right of the picture (wearing the sash) is National Assembly Deputy Patrick Roy, who was also the mayor of Denain.

Photo courtesy of Mireille Wuilbeaux
16. **Belgian Family Wins Historic Court Case Against Eternit**

Yvonne Waterman

**Introduction**

On November 28, 2011, after eleven years of litigation, Belgian pilot Eric Jonckheere (52) and his family won a civil case against Eternit, the fourth largest producer of asbestos materials in the world. At stake was the tortious death of Françoise Jonckheere (67), Eric’s mother, who died of mesothelioma caused by exposure to asbestos on the contaminated work clothes of her husband, who worked at a Belgian Eternit factory, and by environmental exposure from that same factory. Together, the claimants were awarded the sum of €250,000 for economic and non-economic damages, effective immediately. The scathingly phrased verdict is considered to be ground-breaking in Belgium, where asbestos litigation has not occurred before due to constricting liability and social security laws. According to official (Asbestos Fund) literature, over 200 Belgians die of mesothelioma every year; the Belgian victims’ group ABEVA believes the figure to be much higher. Eternit has already announced it will appeal the verdict, which, given the company’s truculent attitude in litigation, will surprise nobody.

**How the Case Started**

For many years, the Jonckheere family lived besides the Eternit factory in Kapelle-op-den-Bos, where Pierre Jonckheere was employed by Eternit. Father Pierre, mother Françoise and their sons Eric, Pierre-Paul, Xavier, Stéphane and Benoit lived and grew up there, in a house close to the factory and right next to two designated areas of discarded asbestos waste material. The Jonckheere children used to love playing there with their friends, whose fathers also worked for Eternit. Asbestos would be trucked into the factory in open wagons, covering the entire area in a permanent thin layer of asbestos dust. The first alarm bells rang in 1977, when the RBTF TV programme “Autant Savoir” spelled out the dangers of asbestos to viewers. After watching that, Mr. Jonckheere promptly went to his supervisor and asked for clarification. Eric remembers what his father told him happened next: “The supervisor brushed some asbestos dust together on his desk, pinched it up with his fingers and then swallowed the dust with a smile. He said: ‘surely I wouldn’t do this if it were dangerous, now would I?’” And that was that. In 1986, Pierre Jonckheere started coughing and died six months later.

In early 2000, Eric’s mother Françoise – co-founder of the Belgian asbestos victims’ group ABEVA – decided to sue Eternit for damages. At the time, she herself was already close to death with mesothelioma. Eternit offered her the customary “silence money” of some €42,000 if she agreed not to litigate. But Françoise refused and on her deathbed, only some months later, charged her five sons to continue the lawsuit she had begun that year in order to call Eternit to account. In 2003 and 2009 respectively, sons Pierre-Paul and Stéphane also died of mesothelioma, only in their forties. Their widows and children were entitled to continue the case as heirs to the claim and joined their brother-in-laws and uncles. So at the end of the day, Françoise Jonckheere’s case is continued by her remaining sons, daughter-in-laws and grandchildren.


Eric explains the anxiety that plagued the family after their discovery that asbestos exposure could be fatal:

“My mother mainly worried about us, the five children. ‘I have washed my husband’s clothes, stroked his hair, kissed him. Perhaps that is how I inhaled asbestos. But what about our boys?’ We had ourselves, all five of us, checked for asbestos. It turned out that all five of us were chock-full of asbestos. That was doubly hard to accept. We weren’t surprised that asbestos was to be found in our bodies, but rather by the amounts: as much as a labourer who had worked all his life at the Eternit factory.”

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Understandably, one question now clouds every day’s joy for Eric and his two remaining brothers: who will be next?

**Some Legal Aspects**

It was not possible for father Pierre to claim damages from Eternit, as, according to the Belgian Occupational Diseases Act, employers are immune to civil liability, except where wilful intent of the employer to cause harm can be shown. However, this immunity would not apply to Françoise nor to her sons, as they had not been employed by Eternit – and they were therefore not barred from litigating against Eternit.

In March 2007, the Belgian government established the Asbestos Fund. This provides asbestos victims with compensation quickly (ranging from approx. €1,500 per month to the mesothelioma victim, while living, to one-time payments of approximately €33,000 for his partner, €17,500 for ex-partners and €27,600 for every child; and similarly about half of this for victims of asbestosis and pleural plaques). The Fund is fairly easy-going on the question of how the asbestos disease was contracted. But there is a downside: by applying, asbestos victims give up the right to go to court against the tortfeasor. The Asbestos Fund is wholly financed by taxes paid equally by each and every employer in Belgium, meaning Eternit pays no larger a share to this Fund than any other employer in the country. The Jonckheere family did not apply for asbestos-related social security benefits from the Fund, as it would have denied them the right (individually) to go to court against Eternit. Legal aid amounts to little or nothing in Belgium: it is every man for himself, basically. Lawyers’ fees are considerable and as such are considered to be very practical barriers to litigation. This explains to some extent why neither occupational victims nor environmental victims have litigated against Eternit before.

**The Case for the Plaintiffs**

The claimant’s lawyer, Mr. Jan Fermon, based the case on two main arguments: that a) Eternit knew of the health dangers of asbestos as early as 1964 and that b) Eternit had tortiously failed to take adequate safety measures to protect its employees, their families and everybody in the environmental vicinity of the Eternit factory against asbestos dangers. Fermon said:

“That asbestos causes cancer was already known in the Forties and it was mentioned in the Encyclopaedia Britannica of 1952. The relationship between asbestos and mesothelioma has been known as of 1952 and has been established irrefutably in 1964. It’s totally unbelievable that the directors of Eternit were not aware of the problem.”

He pointed out that not only did Eternit keep using and producing dangerous asbestos materials, it lobbied actively to repress any ban or limitation:

“To do so, public bodies and the public itself were misled and pressure was exerted on labour unions and politicians. Even as late as 1978, Eternit refused to put warning labels on its products.”

**The Case for the Defence**

The defendant’s lawyer, Mr. Johan Verbist, also relied on two main arguments for the defence: that a) the case was limited (“expired”) and should be dismissed out of hand for that reason and that b) the case lacked cause, as Eternit had never acted tortiously against Françoise Jonckheere and so had no duty to compensate any of the claimants. In support of this Verbist said:

“The previous CEO of Eternit NV and the company doctor also died of mesothelioma. Those people would never have worked with asbestos if they had known of the risk involved.” Also:

“Mesothelioma was actually not [officially] recognised as an occupational disease until 1982.”

He explained that the dangers of asbestos really were not all that clear at the time of exposure as the claimants would have believed that safety measures had indeed been taken: “At first, it was assumed that health risks were related to direct exposure and so, through the years, the production process was adjusted thoroughly.”

On presenting his plea on the last day of the trial, Mr. Verbist was confident that the claim would be completely refuted. He stated that the company was saddened by the fact that people had become ill, but it was certain that no act of Eternit had caused this.

**The Judge’s Analysis**

In a 48-page verdict, Judge Thiery of the Brussels District Court examined all the arguments extensively and, in rather unusually sharp language for a judge, denied all Eternit’s arguments one by one. Considering that the environmental asbestos exposure had continued for many decades until late in Françoise Jonckheere’s life and that the environmental damage around the vicinity of the Eternit factory and her home was extensive and still existing (as implicitly admitted), he denied the defendant’s argument that the claim was limited, thereby allowing the case to be heard fully. He also made short
work of the second main argument that Eternit had not known of the health dangers of asbestos until the Seventies and could therefore not be faulted for not having taken safety measures until then, pointing out that after the Seventies, the level of safety measures was miserably and intolerably low, too:

“At the very latest, the relationship between asbestos and mesothelioma was known in 1967, but Eternit has always minimized the negative consequences and covered up the truth. The cynicism with which the company preferred the pursuit of profit above public health is unbelievable and it made every possible effort to continue the production of the extremely poisonous substance, without giving a hoot about the people who worked with it.”

That perhaps Eternit had acted no differently or worse than other asbestos companies at the time was no excuse: Eternit was to be judged according to its own merits. Much was made of a letter dated April 14, 1950, addressed to the Swiss SAIAC SA in which the Belgian branch of Eternit clearly professed to be aware of the health dangers of asbestos and the need for safety measures. Also, Judge Thiery considered the role of Eternit as part of a vast global conglomerate, in which scientific knowledge had been shared for many decades; the famous First Asbestos Conference in New York of 1964 had been attended by Eternit directors, etc.

Slamming Eternit’s lobbying efforts, the Judge stated:

“It has been sufficiently proven that Eternit has had its own share in the wrongful manner in which efforts were made to belittle the health dangers of asbestos and to cover up the facts and to fight against legislative measures for the protection of public health, when even at the time that it [Eternit] developed these activities, [it] knew with surety that exposure to asbestos involved a serious risk for the development of diseases such as asbestosis, lung cancer and mesothelioma.”

Judge Thiery considered that Eternit should have taken precautions for the safety of its employees and their families as early as 1965. He berated the firm for having little to show on this score, except for some sheets of unverified and uncertified papers detailing the financial costs of clearly inadequate safety measures when “very drastic safety measures” were required:

“The tort of Eternit, which caused the disease and death of [Françoise Jonckheere], has been amply shown. […] Rightly, the claimants state that Eternit has exposed [Françoise Jonckheere] and the other members of her family to an extremely toxic, cancer inducing substance, with gross negligence and full knowledge.”

Switching to the matter of compensation (with the emphasis on non-economic damages), the judge reflected on the importance for victims to receive recognition:

“as has been shown in the court case at hand to clearly be the case as evinced by the huge attendance in court. The compensation to be granted may then serve as an expression of this recognition and may possibly serve as a small contribution to the victims so that they may find their peace of mind even partially.”

Continuing, he ruled that as asbestos pollution is an international problem, the levels of awarded damages in other European Union countries, generally considered to be higher than those in Belgium, should be taken into account even if these countries have different legal systems. Judge Thiery acknowledged that Belgium did not recognize punitive damages (usually an almost unmentionable subject in a country that is quite averse to “Americanisms”). However, the attitude of Eternit had surely increased the measure of suffering of Françoise Jonckheere and her family members and this increase should be compensated concretely and accordingly.

**The Verdict and Aftermath**

The claimants were together awarded the sum of €250,000 in damages, to be paid at once, regardless of whether Eternit will appeal or not. The sum was explained as “5 × €50,000”, which, one might infer, would mean €50,000 for each of the five brothers or for his widow and children in his place, explicitly for both economic and non-economic compensation. Compared to similar compensations in other countries, this is really not that much: almost €500,000 for non-economic damages has been awarded in Italy, €150,000 in France. In The Netherlands, some €57,000 for non-economic damages alone is customary; and this country is actually habitually amongst the lowest ranked of European countries when it comes to non-economic damages. When one further considers that the Judge (according to Belgian rules of law) awarded an amount of merely €7,700 to be paid by Eternit to the claimants for their incurrence of legal fees, when surely eleven years of litigation must have cost them quite a number of times that amount of money, the compensation pales even more.
At the hearing of the verdict, an ecstatic Eric Jonckheere told the crowds of reporters that “just for a moment, my parents and my deceased brothers were with me.” He portrayed the case as that of a small family taking on a global industrial giant.

Mr. Fermon was pleased to tell the world that:

“An impartial judge has given a clear verdict on the way in which an industry has destroyed thousands of lives for the pursuit of money. I hope that this will be the start of a period in which the polluter will truly pay and the costs of this disaster which he has caused, will no longer be shifted to society.”

The verdict has stirred Belgian politics; politicians are already discussing whether and how to improve social benefits for asbestos victims, to lengthen the period of limitation, ways to make the asbestos polluter pay, etc. Whether other Belgian victims will follow Eric Jonckheere into court and what precedent value the verdict will have in the eyes of other Belgian judges, remains to be seen. Yet it seems fairly certain that the end of this tale will not be told for a long time.

One wonders, too, what the impact of this verdict will be elsewhere. For Eternit is indeed, as Judge Thiery reflected, a vast, worldwide conglomerate; and if evidence shows the top hierarchy of this conglomerate to have been aware of the health risks of asbestos at an early time, then this might well have considerable liability repercussions in law courts in other countries, even on other continents.

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NB: All translations included in this article were by the author.
17. ETERNIT IN DENMARK 1928-1986
Kurt Jacobsen†

In 1986, Denmark banned all use of asbestos including production of asbestos cement. The decision followed a number of actions from workers who refused to work with asbestos cement and the opening of a dramatic court case in which 36 workers sued the Danish Eternit company Dansk Eternit-Fabrik A/S (hereafter referred to as Dansk Eternit), demanding economic compensation for work-related diseases caused by the use of asbestos in the production of asbestos cement.

Asbestos was used in Denmark from 1899 for insulating hot-water pipes, and in 1928 the production of asbestos cement started. Shortly after, the Danish Working Environment Authority, DWEA, realized the health dangers caused by asbestos. Following WW2, Danish medical doctors as well as the DWEA had full knowledge of international research on asbestosis and other asbestos-related diseases, and regular medical examinations of Dansk Eternit workers documented beyond doubt that many of them were suffering from asbestosis. Yet, it was only in the early 1970s that the authorities began to prescribe effective workers’ protection measures, and it took another 15 years before a ban was carried through.

Dansk Eternit was founded in Aalborg in December 1927, and the production of asbestos cement sheeting, mainly for roofing, started in April 1928. The founders of the new company were the leading Danish construction and cement corporation, F.L. Smidt & Co. Ltd, and a group of its subsidiaries, all in the cement industry. The mother firm itself signed up for 40 percent of the share capital [1]. Despite subsequent changes in formal ownership through the years, Dansk Eternit has remained under the full control of F.L. Smidt. It also continues to be the sole manufacturer of fibre cement in Denmark.

In the beginning, output was very modest with only one production line; but it grew very rapidly, as is reflected in asbestos imports. In 1928, the company imported 17,000 kg of raw asbestos; this increased to 33,000 kg the following year, and in 1933 reached 260,000 kg, mostly from Russia, Canada and Rhodesia [2].

In 1935, the production facilities were extended with a second production line, and the same year the import of asbestos reached 680,000 kg, most of it from the Amiandos Mine in Cyprus that became the company’s main supplier for the next 50 years (in 1936 F.L. Smith bought the mine through an English subsidiary and Amiandos remained under the company’s full control until it was sold in 1986). A third line was opened in 1937, and shortly after a new product line of asbestos

Dansk Eternit workers in 1929 (photographer: unknown; photo: Aalborg Stadsarkiv).

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cement pressure pipes for water supplies and sewerage discharge was introduced. In 1938, the production of asbestos cement sheeting exceeded the capacity of the Danish market, so the company began to export. It had great success in this regard, and imports of raw asbestos subsequently grew [3].

By coincidence, the manufacture of asbestos cement in Denmark began the very same year the British Worker’s Protection Board began its examination of workers in the British asbestos-textile industry. This examination would go on to document the health dangers from asbestos dust [4].

The results of the report, published in 1930, were known to the DWEA. So, too, was the resulting British asbestos legislation in 1931, which prescribed specific protection measures against asbestos dust and recognized asbestosis as an occupational disease. However, it was not until 1934 that the DWEA for the first time issued a warning against the health dangers caused by asbestos. In an internal note, the factory inspectors were told to pay special attention to certain companies’ use of asbestos so the workers involved could be examined: “It is a well-known fact that asbestos dust can cause damage to the lungs similar to silicosis.” It was specifically mentioned that asbestos was used in the production of asbestos cement. In its annual report for 1934, the DWEA also issued a warning against the silicosis dangers from asbestos [5].

In 1938, silicosis was recognized as a work-related disease in relation to asbestos production, but it was only in 1941, that the DWEA’s physicians began to use the term “asbestosis” to differentiate the disease from silicosis. It was pointed out that asbestosis was more difficult to diagnose on X-rays than silicosis and that the disease had “a rather quick and mortal course.” Furthermore, it was mentioned that asbestos exposure “seems to predispose the development of lung cancer.” [6]

In 1937, the local factory inspector issued the very first recommendation to Dansk Eternit about improvement of the ventilation in a specific part of the production facility. On the same occasion, the inspector recommended that the asbestos workers directly affected by asbestos dust should have their lungs X-rayed and examined by medical doctors. The X-ray examinations were performed in 1938 in the local public hospital, but organized and paid for by the company. This made the DWEA’s physicians rather sceptical – especially as they were receiving the results via the company’s management. The physicians demanded that the affected workers in the future should be X-rayed and examined on an annual basis by the DWEA’s own specialists with no interference from Dansk Eternit, which the company accepted.

In March 1940, the first 21 workers, with periods of employment ranging from one to 12 years, were X-rayed. The medical report of April 7, 1940 stated that four workers seemed to have asbestosis “in an early stage,” while four had “doubtful” symptoms. Thirteen workers were definitely free of symptoms. The conclusion was that “there is a manifest asbestos danger in the Eternit Company,” and it was recommended that immediate precautions be taken to “fight the dust danger” and that the DWEA’s Chief Physician should carry out an inspection of the Dansk Eternit premises [7].

Nothing came of this, however; on April 9, Denmark was occupied by German forces, and during the next five years Dansk Eternit was cut off from supplies of raw asbestos. The precautions now became superfluous as the company, based on a German patent, developed an asbestos-free fibre cement, called Cembrit, using cellulose fibres that, according to the company, had almost the same “magnificent qualities” as the asbestos-based product [8].

Nonetheless, the use of asbestos resumed after the ending of WW2 in 1945, and on February 15, 1947 the DWEA issued its first legally binding prescription to Dansk Eternit, ordering that the workers should “unconditionally” wear dust masks when working with dry asbestos. In the very same letter the company was urged to develop “methods for dust-free handling and transportation of the asbestos.” [9] In its answer of February 19, 1947, the company responded that, though X-ray examinations of the workers had shown no asbestos-related health effects, it would obtain the necessary number of dust masks. The suggestion to develop dust-free handling and transportation methods was not noted [10].

The post-war years showed a remarkable growth of Dansk Eternit. Extension of production continued steadily through the 1950s with asbestos cement sheeting the main product. As a result, the importation and use of raw asbestos increased to around 10,000 tons [11].

The DWEA’s physicians again became worried; three dust recordings in 1949, 1957 and 1958 showed alarmingly high concentrations of asbestos dust – up to 26 times the American limit values of which the DWEA were aware – but no actions were taken despite recommendations from the physicians [12]. In all, no further prescriptions were issued for the next 20 years, except
that the DWEA in 1960 “seriously” asked Dansk Eternit to react “positively” to its recommendation of developing dust-free handling and transportation methods. On the same occasion, and with more binding force, Dansk Eternit was told that it was “an ultimate demand” that the obtained dust masks actually be used [13].

This more stringent attitude, though it was only articulated on a single occasion, resulted from the fact that a survey had revealed that only 7 workers out of 45 were wearing dust masks. More seriously: of 63 X-rayed workers, 10 returned with “evident” and five with “suspected,” meaning incipient, asbestosis diagnoses. This meant that nearly 25 percent were stricken by the deadly disease [14].

Since the mid-1950s the numbers of asbestosis-stricken workers at Dansk Eternit had been slowly, but steadily increasing; but in 1960 peaked, a consequence of the long incubation period of the disease, and in following years the numbers stabilized [15]. The workers, however, were not informed – at least only a few of them – and neither was the public. In 1960, almost all workers were told that they were completely healthy, and in the relevant section in the DWEA’s annual report about lung diseases caused by dust only a single insulation worker who had developed asbestosis was mentioned. In this sense the year 1960 also marked a culmination of 40 years of suppression and double-dealing [16].

Unlike the affected workers and the public, evidently the management of Dansk Eternit was fully informed about the results of the X-ray examinations and the “health dangers at Dansk Eternit.” [17] Their strategy to protect the health of affected workers involved having them transferred to work where they were not directly exposed to asbestosis dust. This meant that the management had a detailed knowledge of the asbestosis dangers throughout all these years, but only very few real precautions were taken to protect the workers and then only after recommendations and orders from the DWEA.

One reason given for not informing the affected workers was to avoid “anxiety,” as a local lung physician wrote to the DWEA’s Chief Physician in 1948 [18]. Furthermore, DWEA physicians travelled from Copenhagen to Aalborg on several occasions to calm worries and prevent disturbances among the workers. At the same time, however, they were writing articles in medical journals and books about the deadly dangers of asbestosis exposure. Following from this other aspect of their work, asbestosis was recognized as a specific work-related disease in 1954.

More particular problems arose when workers asked why they were transferred to other work, even though they were told that they were not ill: “There has been some unrest when it has been suggested to the management that workers were transferred from dusty to non-dusty work,” two physicians reported to the DWEA in 1955 [19].

As a result of the suppression of information and double-dealing, most of the asbestosis cases were not reported to the Directorate of Accident Insurance. According to Danish legislation it was an obligation of the company to report work-related diseases, but also the physicians had an obligation to report. However, only two work-related lung diseases were reported before 1962, and in the following years the number remained far below the ascertained incidents. For quite a lot of the stricken workers this meant that they – or their surviving relatives – were excluded from receiving economic compensation to which they were entitled according to the law.

1960 was also the year when it was definitely documented that asbestos caused mesothelioma, and in 1968 Dansk Eternit’s management and board was informed, that one asbestos fibre might be sufficient to cause the disease, and so was the DWEA [20]. This did not, however, lead to any stronger anxiety over asbestos cement production in Aalborg. With the economic boom of the 1960s and the rise of the Danish welfare state, Dansk Eternit instead experienced an almost explosive and unquestioned growth with the opening of five new asbestos sheet production lines and a rise in the number of workers to 2,000. The company’s annual asbestos imports increased from about 15,000 tons in 1960 to a stabilized level of around 25,000 tons from 1970 onwards. In 1970 the DWEA issued a regulation for asbestos-work with prescription for wearing dust masks etc, but no progress was made, however, on the protection of Dansk Eternit workers against the dangers of asbestosis until the workers themselves began to act.

In 1969, the Cement Worker’s Union in Aalborg arranged group life insurance cover for its members. This gave the union access to all health information on the asbestos workers, from which they discovered that 75 of their colleagues in 1969-1972 took early retirement because of lung diseases, and that 10 of them died shortly after [21].

In 1973, the union took action by reporting collectively 81 asbestos workers to the Directorate of Industrial Accident Insurance. It was an extraordinary event – and much more so as all cases were accepted, 23 with confirmed asbestosis [22]. An “asbestos committee” with
representatives from both the workers and management was established at Dansk Eternit, and the DWEA tightened its grip, with annual dust records and a wave of prescriptions throughout the 1970s. This was the beginning of a constant struggle between the DWEA and the workers on the one side and the company on the other about implementation of the DWEA’s numerous prescriptions and recommendations.

But other groups of workers were on the move. Annual X-ray examinations since 1952 had revealed a high incidence of asbestosis among insulation workers in Copenhagen; this led to the recognition in 1954 of asbestosis as a work-related disease. Now the insulation workers, supported by shipyard workers, pushed for a ban on the use of asbestos in insulation; the industry agreed because it was possible to replace asbestos with other material. In the decisive meeting on November 2, 1971, Dansk Eternit participated as observer and protested strongly against a ban “for fear that the next step would be a ban against the use of asbestos in eternit [asbestos cement].” [23]

The company could not, however, prevent a “ban on the use of asbestos in certain forms of insulation,” which was issued on January 14, 1972. The ban included the use of asbestos in heat, noise and humidity insulation materials. In a supplementary circular letter, the DWEA announced that no decision had been taken regarding rigid building products containing asbestos. Neither was lining for brake blocks included [24]. At Dansk Eternit the manufacture of asbestos cement sheeting could continue, but time was running out.

In 1978, two medical studies of cancer and lung diseases among the workers at Dansk Eternit were released. One of them, performed by the Danish Cancer Register, included 6,094 workers for the period 1943-1972. The other included 189 former workers, employed at the company (1928-75), who had all died after 1951. Among the DWEA’s conclusions on the two studies was that they both “document an over-frequency of lung cancer. Two incidents of mesothelioma have been documented.” [25]

In the public as well as among politicians a demand for a total ban on all use of asbestos was raised, and on November 13, 1979, it finally came. With a proclamation from the Ministry of Labour, all importation, manufacture and use of asbestos was banned from January 1, 1980. The ban was modified, however, by two important exceptions, namely the use of asbestos until 1985 in certain asbestos products, mainly asbestos cement products, and “until further notice” in the production of brake blocks: “In these two fields which have an essential socioeconomic importance … adequate substitutes have not yet been developed,” it was explained. As the manufacture of asbestos cement at Dansk Eternit accounted for 90% of all import and use of asbestos, the effect of the ban was limited [26].

In 1984, Dansk Eternit applied for a prolongation of the dispensation until 1990, which was met by protests.
from the workers and their union – but with little success. The prolongation was granted in February 1984, but at the same time building workers began to refuse to work with asbestos, and in schools and kindergartens employees as well as parents protested against the presence of asbestos in the indoor environment. The public and political demands for an effective ban grew, and the pressure increased when 36 Dansk Eternit workers and widows, with support from the union, issued a summons against Dansk Eternit demanding economic compensation for their losses on March 6, 1986.

Two months later, on May 28, 1986, the Danish parliament passed the final decision for an action plan for an asbestos-free Denmark. As a consequence, on the following day Dansk Eternit was ordered to stop all production of asbestos-containing fibre cement by the end of the year. The compensation for the use of asbestos in brake blocks was not affected, but a few years later this too was dropped.

Meanwhile, the court case was proceeding, and on September 14, 1988, Dansk Eternit was found to be in violation of several provisions in the Danish Workers Protection Act and was ordered to pay economic compensation to 24 Dansk Eternit workers and widows. The Company appealed to the Supreme Court with the following argument from the chairman of the board, Christian Kjær, who is the grandson of the main owner and managing director of F.L. Smidth & Co. Ltd, who, in turn, was behind Dansk Eternit: “We don’t feel that we are trying to get out of anything, but no one in the world has ever told us that the product caused diseases.” Asked whether he believed that the company would win in the Supreme Court, he answered: “I hope so. If not, I fear that we will have a situation as in USA, where a number of firms have to close down every year in order to avoid demands for compensation.” [27]

On October 27, the Supreme Court found Dansk Eternit guilty. It was over – at least when it came to the use of asbestos in Denmark. The health consequences, however, remained. A medical study of 8,588 workers from Dansk Eternit, performed for the Danish Cancer Register in 1985, revealed that 580 had been stricken by cancer, of which 10 had contracted mesothelioma – a significant over-representation. Added to this are an unknown number of workers who came to suffer from asbestosis. The group included all kinds of workers in Dansk Eternit, not just those who had been directly exposed to asbestos, but excluded personnel like cleaning staff, artisans and others who had been working in the plant but employed by other companies [28].

At the presentation of the study, DWEA’s leading physician stated that this was not the end, but that one had to expect that the asbestos would continue to cause cancer until at least 2000. However, past asbestos use proved to have even more far-reaching consequences: today, there are about 100 new cases of mesothelioma in Denmark every year, and the number is expected to increase until 2015, whereafter it is expected to decline [29].

Dansk Eternit now trading as Cembrit Ltd [30] still exists as a prosperous company and a strong international player in the (asbestos-free) fibre cement industry. F.L. Smidth & Co. Ltd. also exists as a prosperous company and is a global player in the construction industry, building cement factories all over the world [31].

The Amiandos mine in Cyprus was sold in 1986 to the Bishop of Limassol, but in 1988 it was closed down. Left is a huge scar in the Troodos Mountains and an unknown number of victims who suffered – and suffer – and died from asbestos related diseases of all kinds including Mesothelioma.

April 2011

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8. FLS-NYT. Special issue 1944.
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18. ETERNIT ACTIVITY AND EMERGING VICTIMS: JAPANESE CASE

Takehiko Murayama and Satomi Ushijima

The Evolution of Japan Eternit

The history of Eternit in Japan goes back to the early 1930s. The Tokyo Gas Company purchased the right to sell asbestos cement (AC) pipe and related products from the Italian Eternit for an initial payment of 6.5 hundred thousand Yen (equivalent to about 5 million Euros today). This led to the establishment in Tokyo (in February, 1931) of the “Japan Eternit Pipe Company” (in this paper: “Japan Eternit”) which began to sell AC pipe in 1932. The payment of the balance (86%) of the purchase price, paid periodically, would cost Japan Eternit up to 3% of their profit.

Over the course of time, Japan Eternit developed a number of factories (Fig. 1). During mid-1950s and early 1970s, the company had three large-scale factories employing more than seven hundred people. At that time, blue asbestos (crocidolite) was used for manufacturing AC pipe as well as white asbestos (chrysotile).

![Diagram of Eternit Factory Locations]

Fig. 1. Periods of operation of the Japan Eternit factories

While there are few documents which described the contents of workers’ jobs in detail, some workers have told of their jobs in the Eternit factories. According to them, the manufacturing process was operated 24 hours a day, to avoid cement solidification, and shifts changed every 8 hours. For processing, asbestos was mixed in the proportion (white:blue) 7:3. Fig. 2 shows a worker lathing AC pipes wearing a simple mask.

![Photo of Worker Lathing AC Pipes]

Photo: Hiromi Murakami, Japan Eternit Pipe Labor Union

Fig. 2. Lathing of AC pipes

Production of AC Pipes in Japan

Japan had three big companies which produced AC pipes. After the establishment of Japan Eternit, the second company, Chichibu Cement Company, started production in 1939. This was because the Japanese government had requested it to do so to satisfy increasing wartime demand. The third company, Kubota, started production of AC pipes in 1955, and continued production with crocidolite and chrysotile until 1975; then with chrysotile alone until 1997.

During rapid economic growth in the 1960s, these companies produced the same style of pipes, and they were cooperative rather than competitive. When one company lacked AC pipes, the other companies dispatched products with the other company’s trademark. In 2005, Kubota announced consolation money for mesothelioma victims around their factory; this caused a huge amount of social and media attention to be focused on the asbestos disaster threatening Japanese society – the so-called “Kubota Shock.” Because the other two AC pipe companies produced the same type of pipes as Kubota, the activities of all three AC pipe companies gave rise to a number of victims of asbestos-related diseases among people living in the vicinity of their factories as well as workers. Fig. 3 shows products of Japan Eternit.

Advantages of AC Pipe Compared to Competing Materials

As in other countries, the use of AC pipes was widespread in Japan, due to the low cost and ease of installation. Until the 1940s, iron pipes were mainly used for water supplies, with asbestos cement pipes gradually replacing them during the 1950s and 1970s. Fig. 4

![Diagram of Eternit Production Process]

From brochure of Japan Eternit Pipe company. Fig. 3. Production process and products of Japan Eternit Pipe

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shows the costs of iron pipes and asbestos cement pipes by diameter at that time. In the mid-1950s, narrow asbestos cement pipes were about 40% cheaper than iron pipes, while the price of wide pipes was about 10% lower. Such differences increased in the mid-1960s, when asbestos cement pipes were 20-60% cheaper. At that time, the price of narrow asbestos cement pipes was less than half that of iron pipes. Another point was that asbestos cement pipes were lighter than iron pipes, which also encouraged their use.

Source: “Sekisan Shiroyo (Data for Estimate)” by Keizai Cyosa Kai (Economic Research Association).

Fig. 4. Costs of pipes for water supply in mid-1950s and mid-1960s (broken line: 1956, solid line: 1965).

Emerging Asbestos Epidemic

As of December 2007, large asbestos companies had acknowledged more than 550 victims. Nichias, the oldest asbestos company in Japan had compensated 307 workers. It produced various kinds of materials including asbestos cloth and insulation, and had links with the British owned Cape Asbestos Company. One hundred and forty-seven workers were compensated by Kubota, which had close ties to the Johns-Manville Corporation.

According to some media articles, victims of Japan Eternit reached 108 as of December 2007 – which the company has never officially admitted. In 1981, a mesothelioma victim was certified for workers’ insurance benefit. This was the first case of compensation for mesothelioma in Japan. The total number compensated by workers’ insurance or the new asbestos relief law reached 80; mesothelioma: 23, lung cancer: 25, pneumoconiosis: 32. In addition, 57 people – ex-workers or their family members from one factory (Takamatsu) – sued for compensation. Later, seven workers from another factory (Omiya) sued, while a worker had already died of mesothelioma.

In addition to workers suffering from asbestos-related diseases, their families were also damaged. Many family members suffered from pleural plaques. The first lawsuit concerned a worker who had a job that involved the handling of raw asbestos from 1952 to 1980; retiring due to asbestosis in 1981. He subsequently died of pneumoconiosis in 1983, when he was 55 years old. As a child, his son had handled masks and clothes his father had brought from the factory. Although he worked in jobs not using asbestos, he died of pleural mesothelioma in 1997, when he was 42 years old. Although his family sued in 2000, the Supreme Court rejected their claim due to the difficulty of identifying his disease. Afterwards, one national authority which operates the new asbestos relief law certified he had had mesothelioma.

Violation of Laws Relating to Health and Safety

Japan Eternit began to provide masks for workers in the early 1960s. Because the masks were very simple, they were easily blocked with relatively large accumulations of asbestos dust. This made it difficult for workers to breathe, so, a number of people worked without masks. According to the workers, no explanation of the hazardous aspects of asbestos or education for avoiding diseases was provided. In addition, the company made workers take their work clothes back to their houses. Some people wore their work clothes even when commuting to work. It was not until around 1977 that precipitators for ventilation were installed at workplaces. This fact was revealed in a court case. When government authorities were due to check factory conditions, the company ordered workers to turn off machines and scatter water on to the floor to suppress dust; anything to give a good impression.

While the first health checks for Eternit workers started in about 1975, it was not until 1980 that the results were reported back to workers. One worker, who directly handled raw asbestos materials, was sent to hospital with pneumoconiosis; on his return the company did not see fit to move him to a “safer” job in a less contaminated area. Some people were not certified for workers’ insurance in spite of their asbestos-related diseases. Even in cases of people receiving benefits from workers’ insurance, Japan Eternit did not inform the victims’ family that the cause of death was asbestos contamination, and required them not to disclose relevant information, including workplace conditions, their diseases and the company’s response. That made the position of other victims much more difficult. To address this problem, unions continue to support ex-workers; helping them in a variety of ways, such as explaining the details of health checks and the workings of the new asbestos relief law.

April 2011
Casale Monferrato, a picturesque town in north-western Italy, has become a universal symbol of defiance to the world’s worst industrial killer: asbestos. The almost biblical trial mankind has undergone at the hands of global asbestos profiteers is exemplified by the fate of Casale’s workers and townspeople. Emerging like a phoenix from the devastation which has befallen this community, the vibrant and effective grassroots campaign for “justice, decontamination, research” has become a beacon of hope for civil society the world over. The “Great Asbestos Trial” of individuals implicated in this scandal has achieved an iconic status not only for the crimes it has exposed but also for what it has revealed about the way corporations make life and death decisions. The Turin proceedings have exploded Eternit’s attempt to keep control of the Casale story. The cat is now well and truly out of the bag. There are many lessons to be learned from the experience of Casale Monferrato not least of which is the warning to all company executives: you too could be held to account for the decisions you make and the corporate policies you administer.

You would have thought that once the lawsuit was being tried in front of the Turin judges, the Casale campaigners could have sat back and watched justice be done. Alas, this was not to be. In July, 2011, just as lead prosecutor Raffaele Guarniello was making his closing statement to the Court, it was announced that the town of Cavagnolo had agreed a tombstone deal with Stephan Schmidheiny’s lawyers. In return for €2 million, Cavagnolo would withdraw “from this and any future trials (against Eternit) that it might be involved in.”

Commenting on that decision, the Mayor of Casale said: “It is clear that a proposal such as that could never be even considered by a city like Casale.” Yet just a few months later, the council of Casale Monferrato was engaged in secret negotiations to settle the municipal claim against the same defendant. The first news campaigners had of the multimillion euro deal came from a newspaper article published in November. After that, all hell broke loose. The town was literally torn apart by the implications of the municipal sell-out.

When the Casale Monferrato council met on December 16 to vote on the €18.3 million offer, the town hall was surrounded by outraged protestors. The members of the Council, which voted to accept the deal, were so frightened by the public unrest that they cowered inside the chamber till the early hours of Saturday morning. As the Christmas holidays loomed, it was widely expected that the agreement would be signed by Mayor Giorgio Demezzi by the December 31 deadline. But, Schmidheiny’s legal team had underestimated the determination of the Casale campaigners and the respect with which they were held. From church pulpits, religious leaders prayed that the councillors would embrace not betray those who were suffering. The local priest Don Paulo Busto held a mass in memory of the asbestos dead in a church directly across from the town hall. Alceste Catella, the Bishop of the Dioceses of Casale Monferrato, joined the controversy when he asked the Mayor to “lead the city in this moment of great suffering: ‘please, I beseech you do something that will prove your respect for the suffering of so many of our citizens.’”

When news was released, on December 22, that Italy’s Minister of Health himself had intervened, it became clear that “the Casale issue,” had achieved such prominence that the Mayor would be forced to reconsider. New Year’s Eve came and went – no deal was signed. As 2012 dawned, Health Minister Renato Balduzzi took part in separate meetings with Mayor Demezzi and the Casale campaigners; ministerial meetings on New Year’s Day, a national holiday in Italy, are a virtually unheard of phenomenon. Having previously praised the “leading role” played by the Casale town council in “the long and hard social struggle” for justice, on January 1st the Minister reaffirmed the Government’s concern for the citizens and support for the town. The response to Italy’s “national asbestos emergency,” would, the Minister promised, be spear-headed by Casale Monferrato, the country’s “anti-asbestos capital.”

Recognizing the wider implications of the case against the Eternit executives, Minister Balduzzi spoke of the continued

3 Mossano S. La “capitale” anti amianto (The anti-asbestos capital). La Stampa. January 2, 2012
production and use of asbestos in Europe and the symbolic importance of Casale’s struggle at home and abroad. At the second meeting, Minister Balduzzi impressed leaders of the asbestos victims’ group AfeVA and trade union colleagues with his “in-depth knowledge of the ‘asbestos emergency’ as a national and global issue.” He laid out a detailed approach to the problem which included meetings in Rome with leading stakeholders such as representatives of the Ministries of Health, Environment, Economic Development and Labor to plan a coordinated response by national agencies, local authorities and federal bodies to the asbestos scandal.

A day of civil action, mounted under the banner of Nessun Dorma (Let No One Sleep), on January 7th attracted crowds of supporters who took part in a silent torchlight procession through Casale Monferrato, attended a musical tribute to the victims and prayed at a midnight vigil on the steps of the Palazzo San Giorgio, the Mayor’s office. Outside the church of San Paolo, actress Caterina Deregibus read a poem based on the grief of Assunta Prato and Giuliana Busto, women who lost a husband and a brother to asbestos-related disease. Amidst the public outpouring of support, 2000+ people called on municipal officials to honor their commitment to the victims and tear up the proposed deal with asbestos defendant Stephan Schmidheiny.

As we go to press, it is impossible to know how the situation will develop. There have been so many twists and turns already that one can’t help but feel the master strategist himself Niccolò Machiavelli looking over our shoulder. In such circumstances we might do well to emulate the faith of Romana Blasotti Pavesi, the President of AfeVA, who wrote “our trust in justice never left us.” We hope that the verdict handed down on February 13, 2012 will vindicate that trust.

January 2012

For news of what happened on February 13, 2012 and thereafter see the following websites:

Asbestos in the Dock: http://asbestosinthedock.ning.com
AfeVA: http://www.afeva.it/
International Ban Asbestos Secretariat: http://www.ibasecretariat.org