

*International Ban Asbestos Network*

*International Seminar*

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**Round Table: *Eternit, History, Asbestos Issues and the Citizens Struggle  
in Latin America.***

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**I. Introduction**

First of all, I would like to express how grateful I am for the overwhelming invitation to take part in this high level meeting in my capacity as one of the lawyers representating the Brazilian Association of the Asbestos Exposed. I speak on behalf of the Association's President, Mr. Eliezer João de Souza and its founder, the engineer, Ms. Fernanda Giannasi. They have designated me to tell you about the current circumstances that surround the Brazilian struggle towards banning asbestos, as well as our campaign to obtain assistance and compensation for asbestos victims in our country.

Nowadays in Brazil, we are experiencing all the facets of the health catastrophe and humanitarian tragedy caused by the use and exploitation of asbestos. We have witnessed painful illnesses and deaths and the sacrifice of men and women, many of whom were involved in the national campaign against asbestos, such as the unforgettable Aldo Vicentin. Aldo

was ABREA's much loved leader; he recently passed away as a result of mesothelioma.

In Brazil we have witnessed the asbestos industry's obstinate position; a position which prioritizes profits and ignores the harm caused by what they deceitfully call the "safe asbestos:" chrysotile. We have witnessed the horrendous continuation of asbestos mining within the city of Minaçu, in the state of Goiás, where a powerful lobby finances the political campaigns of some Parliamentary candidates. Needless to say, these politicians devote themselves to blocking any measures introduced in the Brazilian Parliament to end the misfortunes caused by asbestos.

Currently, Brazilian Eternit, controlled by a group of local investors, is a profitable public company; it owns and controls the SAMA chrysotile asbestos mine, and promotes the commercialization, trade and export of the deadly mineral in Brazil and abroad. In order to maintain the appearance of neutrality, Eternit relies on the propaganda disseminated by the Brazilian Institute of Chrysotile (IBC), an entity created to promote the fallacy that "Brazilian (chrysotile) asbestos" (commonly referred to as white asbestos), is a harmless but essential part of our national heritage. The IBC maintains that the national asbestos industry which creates so many employment opportunities is under attack from foreign economic interests. The IBC's generous budget comes from asbestos industry profits.

In 2005, 2008 and 2009, ABREA succeeded in challenging and having suspended misleading advertisements published by the IBC on radio, television and in the newspapers which were intended to deceive the Brazilian public. Decisions taken by the National Advertisement Self-Regulation Council (CONAR) prohibited the IBC from publishing false

information which stated that asbestos produced in Brazil would not harm human health.

The influence and power of the Brazilian asbestos industry have affected labour federations; it is inexplicable that members of a trade union representing workers in the asbestos industry appear more interested in protecting the welfare of the industry than the health of their members. There is a collective labour agreement signed by the National Confederation of Asbestos Workers (CNTA) and renewed every other year whereby the CNTA accepts money from the IBC to develop pro-asbestos campaigns. The suicidal stance of the union and the explicit breach of the union's autonomy have motivated ABREA to present a complaint to the International Labour Organization (ILO), claiming a breach of article 2 of Convention n° 98, ratified by Brazil. This provision of the Convention establishes the independence of labour organizations from employers; the employers' actions or acts by their agents such as the provision of financial resources in return for influence or control is not permitted.

## **II. Importance of the Turin Proceedings**

The Turin Criminal Court proceedings are a warning to negligent corporations as well as a precedent for those engaged in the legal struggle against asbestos in Brazil. The current managers of the Brazilian Eternit company continue to emulate the past actions and behaviour of the European Eternit executives who are now facing charges for their part in the company's activities, considered criminal by Italian prosecution.

An important development in Brazil's legal struggle against Eternit and a

victory for the victims was a 2005 decision in a class action for 2,500 asbestos exposed workers. The Court ordered the negligent defendant corporation to pay compensation for damages, pain and suffering; life-time [note- lifetime is one word] pensions; and provide free medical care and periodic medical check-ups.

This decision was handed down by a São Paulo Court at the conclusion of a class action brought by prosecutors from São Paulo State; the decision has been appealed. This precedent is significant as it sets a standard for other Brazilian Courts on the important issue of statute of limitations. This case accepts a more flexible view of the statute of limitations, beginning its term when the claimant (the worker or former worker) becomes aware that he or she has contracted an asbestos-related disease.

After the 2005 claimants' decision was handed down against Eternit, ABREA sued Brasilit and Saint Gobain subsidiaries. Although nowadays these companies no longer use asbestos, in the past they did; in fact they worked in partnership with Eternit for many years. ABREA sued Brasilit and Saint Gobain subsidiaries for the asbestos-related liabilities they incurred during the many years they were engaged in the processing of asbestos. The fact that these companies are no longer using asbestos does not excuse corporate negligence in years gone by.

A controversial issue regarding asbestos compensation in Brazil is the existence of agreements issued by negligent corporations which are offered to former workers. The workers are encouraged to sign these documents in return for a small amount of money. Generally speaking, the workers are offered these agreements when they are still healthy and unaware of the risks they had been exposed to at work.

Often, when the workers become seriously ill, or when their bereaved relatives try to bring a civil compensation case, they realize that they had signed away their rights to bring such a lawsuit in that agreement. By that time, of course, it is too late. Legal remedies for this injustice are being pursued based on the existence of “a consent fault”, that is, the fact that the injured party was deceived by the asbestos company as it did not disclose the reality of the risks posed by occupational exposure to asbestos. Signing these agreements under false pretences abrogates their legitimacy.

Progress is being made in the judicial struggle to obtain compensation for asbestos victims. A recent decision awarded the family of deceased engineer Yura Zoudine, a sum of \$300,000 against his former employer, Eternit. This decision, which was appealed to the Regional Court, was upheld. Similar cases for deceased mesothelioma victims are about to go to trial. On the other hand, when the diseases are less extreme, such as asbestosis or pleural plaques, Brazilian victims have had a difficult time in Court.

Considering the continuing difficulties experienced by so many Brazilian asbestos victims it is unjustifiable that asbestos use continues; it can only do so because negligent asbestos stakeholders are able to off-load the human, legal and social costs onto victims and their family members.

ABREA has led the fight in Brazil to ban asbestos; in fact a national prohibition of asbestos use remains ABREA’s absolute priority. ABREA has mobilized civil society and continues to work with social partners, including its lawyers, to achieve its goals. Several attempts to enact federal legislation banning asbestos have been blocked by Members of Parliament funded by the asbestos industry; the politicians who accepted campaign

donations from industry stakeholders work assiduously to represent corporate interests in Parliament. ABREA has monitored and exposed the actions of these individuals while at the same time campaigned for state laws banning asbestos. As of now, the States of Mato Grosso do Sul, São Paulo, Rio de Janeiro, Rio Grande do Sul and Pernambuco have banned asbestos.

Needless to say, the asbestos industry never sleeps. Through its puppet union, the industry made representations before the Brazilian Supreme Court (STF) which challenged the constitutionality of the state laws banning asbestos. At the beginning of the proceedings, the STF suspended these laws on the grounds of federalist principles citing Federal Law n° 9.055/1995. This law supports the “controlled use of asbestos,” a fallacious and unachievable fantasy much loved by Brazilian and other asbestos lobbyists.

On June, 4<sup>th</sup>, 2008, for the very first time, the Supreme Court reconsidered the position previously taken. By a vote of seven against three, the STF Judges recognized the constitutionality of the law from São Paulo State, the biggest economic power of the country, that prohibited the asbestos trade in the State. The participation of ABREA as an *amicus curiae* in the STF proceedings played a major role in the successful outcome of this trial. During the reading of the STF judgement, the Court singled out the work of ban asbestos activists including Fernanda Giannasi and Aldo Vicentin, one of ABREA’s founder members and the heart and soul of the group. As STF trials are broadcast live on TV, Fernanda and Aldo watched the proceedings closely. The day after the judgment, Aldo underwent an operation for mesothelioma; he died one month later.

The impact of the live transmission which informed all Brazilians of the hazards of asbestos and upheld the constitutional right of citizens to live a healthy life was enormous. The text of the verdict stated that Brazil produces asbestos-free materials suitable for replacing dangerous asbestos products; this substitution is recommended by ILO Convention n° 162. To the amazement of both civil society and industry forces at the end of the judgement, the President of the session, Justice Cezar Peluzo, declared that the controlled use of asbestos law was unconstitutional. Although this judgement only upheld the asbestos ban in São Paulo State, the implications were clear: Brazilian States could legally ban asbestos to protect the health of their citizens..

The financial impact of this decision was so great that the next day Eternit shares dropped by 30%. Alas, even this landmark decision did not deter Eternit; the company continues its asbestos operations in Brazilian states which have not yet banned asbestos. ABREA is determined that one day the asbestos industry's leaders and shareholders will face legal charges for their actions just like former Eternit executives who are being prosecuted in Italy for their alleged involvement in the asbestos-related deaths of thousands of Italians.

Other steps which have been taken towards banning asbestos in Brazil, include the prohibition of its use in public buildings belonging to the Health, Culture and Environment Ministries. We are eagerly awaiting publication of a report by the Asbestos Working Group of the House of Representatives and are optimistic that this document will advocate revoking the federal government's policy of "controlled use" in favor of a complete national ban. If that does not come to pass, another Supreme

Court hearing will examine the constitutionality of the “controlled use” federal law.

## **Conclusion**

In Brazil, we face enormous asbestos challenges including banning asbestos, ending asbestos mining and prohibiting the marketing of all products containing it. At the same time, the task of providing compensation to all those who have been injured through exposures to asbestos, and the number of victims is increasing all the time, is also a formidable one. Judging by the current trends, we believe that the national incidence of asbestos-related disease will continue to rise for years to come.

Brazilian asbestos victims pay tribute to the prosecutors in Turin and the Italian judicial system which has permitted the landmark trial in Turin to proceed. We hope that Eternit’s asbestos victims will receive the justice from the Italian courts which they have not yet achieved from the Brazilian judicial system. The trial in Turin is an inspiration to us and we hope we can follow your example so that we too can expose the negligence of the executives who took important decisions affecting Brazilian citizens and who consistently put profit before safety in their corporate deliberations.

There is no doubt that the asbestos tragedy is a health disaster on a massive scale. It is also an unparalleled humanitarian massacre that raises uncomfortable questions about the very nature of XXI century civilization. Unless, we prioritize this industrial and public health disaster and take urgent concerted action on a global scale, the deadly asbestos epidemic will be transferred to populations in countries where protection from hazards at work and at home are weak or non-existent.



I believe that the meeting in Turin is of utmost importance as it confirms the determination of Eternit's asbestos victims not only to achieve justice for their comrades and colleagues but to ensure that future generations do not suffer from the deadly diseases caused by exposure to asbestos.