



March 25, 2009

Summary Report: Third Party Complaint Regarding Estofel S.A., Guatemala

Complaint

In May 2008, the Fair Labor Association (FLA) received Third Party Complaints from eight former workers at Estofel, S.A., a factory located in Guatemala City, Guatemala. The complainants raised allegations of labor violations, including failure to pay severance benefits owed to workers at the plant, which had closed in November 2007.

The FLA had been alerted about the closure of the factory shortly after it occurred by Guatemalan labor rights organization COVERCO (Commission for the Verification of Corporate Codes of Conduct). FLA-affiliated company Phillips-Van Heusen (PVH), who had sourced directly from the factory until a few months before the closure, was contacted by some of the workers and COVERCO shortly after the closure and pressed Estofel for full severance payments. PVH also pressed for the payment of full severance to Estofel workers with Singaporean company Ghim Li, a business partner of Estofel.

In March 2008, University of Washington officials communicated to the FLA concerns about violations of workers rights and failure to pay severance at Estofel, based on information gathered by University of Washington students during field work conducted in Guatemala in February 2008. A follow-up email from the University of Washington dated May 13, 2008, suggested that GFSI, Inc., an FLA-affiliated company, was sourcing from Estofel as Champion product had been identified in production. After further investigation, it was clarified that most of the Champion product found belonged to Hanesbrands (licensor of Champion to GFSI), not GFSI, Inc.

The Worker Rights Consortium (WRC), at the end of April 2008, sent a memorandum to Estofel management regarding the lack of payment of full terminal compensation to workers required by Guatemalan law.¹ In the memorandum, the WRC indicated that its investigation had concluded that the factory had not paid the requisite payments under Guatemalan law and questioned the methodology used by the factory to calculate the severance. The WRC recommended that the factory provide workers with full compensation in a manner consistent with Guatemalan law.

¹ Memorandum from Jeremy Blasi, Worker Rights Consortium, to Derrick Peck and Stefan Lim, Estofel, S.A., dated April 29, 2008.

Independent Investigation

The University of Washington, an affiliate of the FLA and the WRC, urged the two organizations to work together and use their best offices to achieve the payment of severance benefits owed Estofel workers. Preliminary information showed that about 1,000 workers were owed terminal compensation benefits as a result of the closure of two plants operated by Estofel, Plant 2 in October 2007 and Plant 1 in November 2007.

The FLA and the WRC organized an ad-hoc multi-stakeholder group to manage the resolution of the case. The group consisted of representatives of the University of Washington, GFSI, Inc., Hanesbrands (licensor of the Champion brand to GFSI), Phillips-Van Heusen, Ghim Li (a Singaporean corporation that formerly owned Estofel), and the Collegiate Licensing Company (licensing agent for the University of Washington). The group began to meet (by telephone) in May 2008 and for an extended period of time held weekly calls to keep apprised of developments and formulate next steps.

In order to obtain an independent estimate of the magnitude of benefits due to each of the workers affected by the closure, in June 2008, the FLA and the WRC jointly engaged COVERCO, a well respected labor organization in Guatemala and an FLA-accredited independent external monitor. COVERCO's primary task was to determine the amount of severance due each of the workers dismissed by Estofel when the factory closed, consistent with Guatemalan law. The terms of reference for the engagement were as follows:

1. COVERCO will examine Guatemalan labor law and practice with regard to severance. In particular, COVERCO will indicate the base (basic wage, performance bonuses, etc) on which severance should be calculated consistent with Guatemalan law;
2. For each worker, COVERCO will provide: (1) amount of severance due the worker; (2) amount of severance already paid by the factory to the worker; and (3) amount of severance still not paid to the worker. COVERCO will also provide summary statistics on these three variables for all workers.
3. COVERCO staff will have unfettered access to pay records and to personnel files of all Estofel workers. From this information, for each employee COVERCO will determine tenure with the company and base on which to pay severance. Pay records and personnel files are confidential records and COVERCO will treat them as such.
4. The records review and severance calculations will be conducted by COVERCO staff. If necessary, COVERCO could involve a local accounting firm or an expert individual to assist in conducting the work, subject to confidentiality requirements.

5. COVERCO will commence the records review and calculation of severance as soon as possible once access to company records has been secured and a location where the files can be reviewed has been determined.

COVERCO started its field investigation on June 27, 2008, after gathering the necessary records from Estofel and establishing a centralized location for the audit. COVERCO produced an initial report on its investigation on July 31, 2008, and a final report on August 21, 2008. COVERCO's final report is attached. Information regarding individual workers appended to the report has been removed to respect confidentiality.

Results of COVERCO's Report

Based on information provided by the factory, COVERCO reported that Estofel had a total of 974 employees on October 15, 2007, around the time when the closure process started: 315 workers were on the payroll of Plant 2 (the first unit to close), 620 were on the payroll of Plant 1 (the second unit to close), and 39 were on the administration payroll (serving both plants). The factory also informed COVERCO that, at the time of the closure, 57 workers were pregnant and 35 were breast feeding. COVERCO verified payroll records of the 974 employees and also examined settlement forms (*finiquitos*), payment vouchers, and bank deposit records to establish the benefits due to each worker and the amount paid.²

According to COVERCO, under Guatemalan law, workers dismissed because of closure of a factory are entitled to the following payments: (1) Christmas bonus; (2) Bonus 14; (3) vacations; (4) severance; (5) indirect labor benefits (economic advantages); (6) maternity (pre- and post-natal); and (7) breastfeeding period. While the first five benefits apply to all workers, the last two benefits apply only to workers that fall under these specific categories, in this case, the 57 pregnant workers and 35 workers breastfeeding at the time of the Estofel closure.

Based on the above analysis, COVERCO estimated that the 974 former Estofel workers were due total benefits in quetzales (Q) of Q 11,106,599 (about \$1,375,175 at the current dollar-quetzal exchange rate³) while the factory had already paid benefits in the amount of Q 3,868,618 (about \$478,997).

Attorneys for Estofel presented legal arguments against the obligation to pay indirect labor benefits (economic advantages). Ultimately Estofel agreed to a settlement that would exclude payment of indirect labor benefits. Estofel conditioned the payments on (1) workers who received the additional payments executing a *desistimiento* terminating legal claims against the factory; (2) those workers who had filed law suits dropping them;

² COVERCO also examined records of 83 workers whose employment contracts were cancelled in September 2007. The factory presented COVERCO with documentation to the effect that these workers had resigned voluntarily; according to Guatemalan law, workers who resign voluntarily do not have the right to receive severance, but nevertheless the factory made severance payments to 23 of them.

³ The dollar-quetzal exchange rate varies daily. In this report, the exchange rate effective March 13, 2009 was \$1=Q 8.0765, according to Yahoo Finance.

and (3) setting February 20, 2009 as the end of the period for making the payments. Thus, the labor benefits due to workers that Estofel agreed to pay amounted to Q 8,685,755 (\$1,075,435); as Q 3,868,618 (about \$498,997) had already been paid, the additional amount due to workers was Q 4,817,136 (\$596,439).

Outreach

The WRC and the FLA developed an outreach plan for distribution of funds to former Estofel workers. Given the time that had elapsed since the closure of the factory, there was recognition that the distribution of funds to Estofel workers would be challenging and laborious.

COVERCO was engaged to coordinate the worker outreach process. COVERCO worked closely with the ad hoc committee of Estofel workers, used its communication channels with workers, and placed a notice in two national newspapers urging Estofel employees to come forward to claim the additional payments. In addition, on October 20, 2008, COVERCO sent a letter on Estofel stationery to each former worker (at the address in the factory's personnel records) requesting that he or she contact COVERCO to learn more about the additional payments and how to receive them. COVERCO established a dedicated phone line in its office to take inquiries from Estofel workers and inform them about the distribution process.

COVERCO, representatives of Estofel, and legal counsel formed a working group to address discrepancies in the list of workers eligible to receive payments or the amounts to be paid (in instances when verifiable new information was provided) and to address special cases. The working group met periodically beginning in October 2008 and through February 2009 and agreed on the workers who would be paid at the sessions and the amount each would receive.

Distribution of Payments

The distribution of payments began on December 4, 2008; additional payment sessions were held on December 5 and 12, 2008; January 19 and 23, 2009; and February 20 and 23, 2009.

Drawing on a final report of the outreach process prepared by COVERCO (attached), the following can be stated about the distribution of payments:

- Table 1 below (from COVERCO's final report) shows that COVERCO was able to reach almost 95% of the 974 workers in the August 2008 report. A total of 860 workers received payments amounting to Q 4,114,491 (slightly over \$509,440), 89.9% of the estimated Q 4,577,104 (\$566,719) that COVERCO deemed workers should have received in additional payments.⁴

⁴ See COVERCO's March 2009 final report for a description of the adjustments (amounting to Q 240,033) made to the original amounts. The adjustments resulted from payment vouchers and bank deposit receipts

Table 1 COMPARATIVE SUMMARY					
No.	Category	Number of Workers	Estimated Amount	Amount Paid	Difference
1	Received payment	860	Q 4,354,523.15	Q 4,114,490.60	Q 240,032.55
2	Did not collect checks	25	Q 78,773.03		
3	Were owed Q.0.00	4	Q -		
4	Resigned	20	Q 161,117.23		
5	Signed "desistimiento"	14	Q 101,018.62		
6	Not located	51	Q 121,704.17		
	Total	974	Q 4,817,136.20	Q 4,114,490.60	Q 240,032.55

Source: Coverco's March 2009 Final Report

- Table 3 below (also from COVERCO's final report) adds 13 workers who were not included in COVERCO's August 2008 report (because the factory did not turn over the relevant records to COVERCO) and who were later determined to be eligible for the payments. Eleven of the 13 workers received the payments. Adding these 11 workers to those in Table 1 results in a total of 871 workers receiving payments totaling Q 4,216,546 (\$522,076).

Table 3 CONSOLIDATION OF TABLES 1 AND 2					
No.	Category	Number of Workers	Estimated Amount	Amount Paid	Difference
1	Received payment*	871	Q 4,456,578.51	Q 4,216,545.96	Q 240,032.55
2	Did not collect checks	27	Q 79,184.83		
3	Were owed Q.0.00	4	Q -		
4	Resigned	20	Q 161,117.23		
5	Signed "Desistimiento"	14	Q 101,018.62		
6	Not located	51	Q 121,704.17		
	Total	987	Q 4,919,603.36	Q 4,216,545.96	Q 240,032.55

Source: Coverco's March 2009 Final Report, Table 3.

Conclusion

When the time period set by Estofel for payment of additional severance benefits to former Estofel workers came to a close, 871 workers had received payments amounting to a total of nearly \$526,000. Almost 95% of the former Estofel workers who had been

into the accounts of workers that the factory presented subsequent to the original audit, and COVERCO verified.

employed by the factory at the time of closure and were eligible to receive additional payment were reached by COVERCO to inform them of this opportunity to collect severance.

Reaching such a high percentage of workers and being able to pay such a substantial amount of additional severance to them speaks well of the collaborative effort over many months by a coalition of stakeholders including universities, FLA-affiliated companies, Estofel, the FLA, and the WRC. It also reflects the outstanding support on the ground provided by COVERCO, supported by the ad hoc committee of Estofel workers and local counsel for Estofel. The FLA considers this Third Party Complaint closed and will so inform the parties.