



Comisión de Verificación de Códigos de Conducta
-COVERCO-

**REPORT
COMPLEMENTARY PAYMENTS
ESTOFEL
March 2009**

I. Introduction

The Fair Labor Association (FLA), after requesting that COVERCO conduct an audit of the payment of labor benefits at the factory Estofel, S.A., asked COVERCO to conduct an outreach program to locate the workers to inform them about the complementary payments and to oversee their proper distribution. To manage the distribution of payments, a commission composed by representatives from Estofel, S.A., the law firm Díaz-Durán and COVERCO was created. The commission held periodic meetings to coordinate the distribution of the payments beginning in October 2008 and operated in accord with the procedures below.

Initially, there was receptivity toward collaborative work on the part of the law firm, while interference by the factory raised problems during the month of November. This was overcome later on as the factory worked with COVERCO to verify information on specific cases.

II. Procedures

The FLA established the following procedures with regard to the complementary payments:

1. Estofel, the law firm and COVERCO would meet periodically, or as needed, to coordinate the process of distribution to workers of the complementary payments.
2. The list of workers that will govern the payments is the one that COVERCO audited for the FLA in August 2008. (See Annex 1).¹ Potential corrections to the list will be handled on a case-by-case basis in accord with a procedure developed jointly by COVERCO and the law firm:
 - Workers who resigned prior to the closure of the factory will not receive payment and will be excluded from the list.
 - Workers not on the list but who can prove that they are eligible to receive payments will be included in the list and will be paid only if there are funds within the negotiated amount to make such payments.
 - Workers who appear on the list with a negative balance will be reviewed to determine the amount that is due them, applying the same criteria as above, that is, that they will be paid only if there are funds within the negotiated amount to make such payments.

¹ Annexes have been deleted from this public version to safeguard the privacy of workers.



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3. The amounts to be paid to workers are those in COVERCO's final report of August 2008, excluding economic advantages.

4. Workers who have signed a release and judicial "desistimiento" in favor of Estofel but appear in COVERCO's list will have their names set aside and tabulated for future consideration as they were paid only a portion of their benefits and their names appear in the list of workers eligible to be paid.

III. Methodology

• Outreach

In order to locate workers, Estofel sent a letter to each worker to the address the workers had provided Estofel. The letter stated that the workers should call a number at COVERCO to indicate whether or not they were willing to accept the payment. The information was also published in a newspaper with extensive circulation. (See Annex 6).

COVERCO sent the letters on October 29, 2008, to the workers at the addresses provided through the Guatemalan postal service. COVERCO put in place a process to receive calls and assign payment dates. This process led to reaching 80% of workers. Reaching the remaining 20% was more complicated. COVERCO sent them second letters and sought them out physically at their reported addresses. With the assistance of the ad hoc committee, it was possible to reach another 15% of the workers, with only 51 of the workers not reached.

• Payments

The factory presented documentation regarding payments that COVERCO did not have when it conducted its audit. As a result of the new information, the value of benefits of some workers were changed. (See Annex 2). COVERCO researched and verified the new information and in some cases interviewed workers and received testimony confirming that they had received payments.

The dates for making the payments were coordinated with the law firm. On several occasions, the payment dates were changed. Initially, the plan was to pay workers 50 at a time and COVERCO scheduled workers in groups of 50 to be paid in the order in which they called. When the payment date arrived, the law firm informed COVERCO that the paperwork for the payments had not been completed. COVERCO had to locate the workers to inform them about the change. COVERCO promoted the idea of paying in a single day the more than 400 workers that had been assigned payment dates and proceeded to locate the workers again in order to effect the payments.

In the month of December, a payment session was scheduled which was later suspended. A similar situation occurred in January when the last payment date was being programmed.



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Changes in dates for making payments caused ill feelings among a significant number of workers. There is testimonial evidence that some workers lost their job or had problems with their employer because of their absence from work to attend payments sessions organized by COVERCO that were cancelled.

Despite the methodology used to convoke workers to receive payment, at each of the payment sessions some workers turned up who had not made prior contact by telephone. In these cases, contact information was gathered at the factory and workers were programmed for a future payment session.

The factory observed the order of payment coordinated by the ad hoc committee, which gave priority to pregnant women, women breastfeeding, workers with small children, older workers, and workers who had filed legal claims against the factory.

An important point to raise is the role played by the lawyers who represented workers who filed law suits. From the outset of the process, we could see that the lawyers charged workers (both those who filed lawsuits as well as those who did not) 15% of the payment that they received. The lawyers waited for the workers outside of the factory, forced them to board a bus that took them to a bank, and handed the workers a deposit slip so that they would deposit on behalf of the lawyers 15% of the amount received.

Faced with this situation, COVERCO informed workers during phone calls and also in person during the payment sessions that this charge was only applicable to those workers who had law suits. However, fearful of the lawyers, workers boarded the bus and paid the 15%.

IV. Results

To present the results of the process of outreach and distribution of payments, it is necessary to begin with Table 3 from COVERCO's audit report.



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Table No. 3
Comparative Summary of the Calculation of Total Labor Benefits, excluding Indirect Labor Benefits, for the 974 Female and Male Workers of Estofel, S. A.

| Overall Total Labor Benefits Christmas Bonus, Bonus 14, Vacations, Severance Pay, Maternity and Breastfeeding Period | | | |
|---|---------------------|---------------------|----------------|
| COVERCO | IGT | FÁCTORY | |
| Amount | Amount | Amount | Remarks |
| 8,685,754.69 | 8,010,124.01 | 3,868,618.49 | |

Consolidation of estimates for Plantas I, II and administrative area.

The table above shows that the amount to be paid to workers should have been Q.8,685,754.69, and that the factory paid Q.3,868,618.49. Therefore, the additional amount to be paid was **Q.4,817,136.20**; from this point forward, this report shows the distribution of the alter amount.

The next table shows the categories into which the workers were grouped and the amounts applicable to each.

| 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 |

Based on COVERCO's data, February 2009.

1. Received payment

A total of 860 workers were paid, 92% of the workers to be reached. In this group are included the payment that the factory made to the mothers of three deceased workers. The estimated amount to be paid to these workers was Q4,354,523.15, but a total of Q4,114,490.60 was paid.



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The difference of Q240,032.55 arises because the factory presented vouchers regarding Plants I and II and other information demonstrating that they had made payments to workers in the administration section. This documentation was not available at the time of the audit. (See Annex 2).

2. Did not collect checks

Twenty five of the workers who had contacted COVERCO to confirm that they wished to receive payments did not actually turn up to collect their checks for different reasons, among them small amounts, relocation of the workers to other communities or even to other countries before receiving payment, and problems in coming to the factory at the appointed time because the factories where they were working granted them permission to be absent on days when the payments were cancelled and would not do so again because of concerns that the workers were lying to get time off. Some workers asked Estofel for a document certifying that they had come to the factory, but Estofel informed them that it could not do so.

3. Were owed Q.0.00

There were 4 workers included in COVERCO's report who received the correct payment from the factory. It should be noted that COVERCO reviewed the calculations and verified that they were correct. These workers had relatively little tenure in the factory. It was therefore not necessary to make adjustments to their benefits.

4. Resigned

Twenty workers resigned. COVERCO interviewed 19 of the 20 workers; they all indicated that the factory, through supervisors and administrative personnel, advised them about the closure and recommended that they resign so that they could collect part of their benefits. For this reason, COVERCO made the case to the commission that these workers should also receive complementary payments. However, the factory argued that it acted properly and since it had evidence in the resignation, it would not agree to a complementary payment. (See Annex 3).

5. Desistimiento

The factory provided evidence of desistimientos executed before judges regarding 14 workers who negotiated and accepted payments from the factory and terminated their legal claims. COVERCO expressed the opinion that these workers should also be paid the complementary amounts, but the factory and the law firm did not agree. (See Annex 4).

6. Not located

Although COVERCO visited several of the addresses provided by the factory, sent a second letter, and also sought help from the ad hoc committee in locating workers, it was not possible to locate 5% (See Annex 5); some of the workers have left the City of Guatemala, have moved, or have left the country (4 cases).

The last day that payments were made, 5 workers came to the factory. COVERCO consulted with the law firm and Estofel and was informed that these workers could not be paid as the time period for locating workers had expired.

7. Added workers



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| Table 2 ADDED WORKERS | | | | | | |
|--------------------------|------------------------|-------------------|---------------------|---------------------|------------|--|
| No | Category | Number of Workers | Estimated amount | Amount paid | Difference | |
| 1 | Received payment | 11 | Q 102,055.36 | Q 102,055.36 | Q - | |
| 2 | Did not collect checks | 2 | Q 411.80 | Q 411.80 | Q - | |
| | Total | 13 | Q 102,467.16 | Q 102,467.16 | Q - | |

Based on COVERCO's data, February 2009

The workers who were added appeared on a payroll sheet that was not given to COVERCO during the audit. Therefore, the agreement made by the commission was that the names of these workers would be added to the master list since they were workers that had filed legal claims against the factory, as was the case of the representative of the ad hoc committee, whose name was included in this payroll. All 13 workers were located, but 2 of them did not show up to collect their checks.

Adding the group of workers in Table 2 to those in Table 1 brings up the totals to 871 workers and payments to Q. 4,216,545.96 (Table 3).

| 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 | |

*Includes payment of three deceased workers.