

WALTHAM CONSTRUCTION SUPPLY CORP.  
V. FOSTER FUELS, INC.

**General Instructions**

This is a lawsuit between two companies over an allegedly defective product. Waltham Construction Supply Corporation is a regional supplier of sand, cement, and other construction materials that runs a fleet of 150 heavy vehicles, consisting mainly of dump trucks but including cement mixers and light vehicles. Waltham's vehicles are garaged in six depots. Foster Fuels, Inc., is a family-owned business that supplies diesel fuel, oil, and related products to businesses. For several years, Waltham had bought some of its diesel fuel from Foster. Two years ago, Waltham needed some new antifreeze. It decided to buy the antifreeze from Foster. Foster delivered three barrels of antifreeze, one barrel at each of three Waltham depots.

Waltham's staff of mechanics put the antifreeze into the radiators of 70 of its 150 trucks. Two days after the antifreeze was installed, garage workers arrived at work to see coolant running in a narrow stream out from underneath the garage doors. They saw that two trucks filled with Foster antifreeze were leaking badly. The staff found that virtually every rubber and neoprene component in the system, such as hoses and gaskets, was badly corroded and disintegrating. Over the following three days, four other trucks that had been treated with Foster antifreeze showed the same corrosion. The garage manager, a 15-year employee at Waltham, had never seen this type of corrosion before.

The day after the first corrosion appeared, Foster's sales manager came to the Waltham depot to look at the trucks. He remarked that the Foster antifreeze did not look right: it was blue rather than green, the color of the antifreeze that Foster sold for small engines, not large ones. He apologized for having sent over the "wrong antifreeze" and arranged to have the remaining Foster product picked up and replaced with the "right stuff." All the unused Foster antifreeze was taken away.

Waltham's mechanics immediately flushed out the cooling systems of each vehicle treated with the Foster antifreeze, replacing it with Texaco coolant, which the company had used before. Nevertheless, during the second week after the flushing, more Foster-treated vehicles came down with extraordinary corrosion. In the two years since the first report of damage, the rate of failure has dropped sharply, and in the last six months there has been only one instance of cooling-system corrosion. A total of 21 vehicles have shown corrosion damage. Waltham asked the service that

does its regular engine overhauls to repair the damage; because the damage was so extensive, this required a complete overhaul of each engine, at a cost of \$9,800 per truck.

Several days after the first reports of corrosion, Foster's insurer, Lloyds of London, sent an investigator to look at the engines and take the damaged components away for testing. Four months later, Lloyds' adjuster informed Waltham that it would not take responsibility for the damage because it was not able to find anything wrong with the Foster antifreeze. After an exchange of letters, Waltham sued Foster. Waltham alleged that Foster had been negligent in supplying Waltham with bad antifreeze. If Waltham won, it would be entitled to damages equal to the repair costs and perhaps the lost value of the vehicles, plus interest at 12 % per year.

Waltham also sued Lloyds, alleging that the insurer had committed a "bad faith settlement practice" by rejecting Waltham's claim for compensation. Under local law, an insurer who refuses to pay an insurance claim when it knows, or clearly should know, that the claim is valid has acted in "bad faith." If Waltham prevails on this claim, (a) it will recover its "reasonable attorney's fees" and (b) the court may, in its discretion, double or treble the basic damages.

In summary, Waltham is seeking:

From Foster

C The cost of overhauling 21 trucks @ \$10,000 apiece	\$ 210,000
C Impaired market value of the other 49 trucks @ \$5,000 apiece	245,000
C Legal interest of 24% (two years @ 12%)	110,000

From Lloyd's

C Double the basic damages (twice 210,000 + 245,000)	910,000
C Attorneys' fees	<u>60,000</u>

Total: \$ 1,535,000

The defendants have made no offer of settlement.