

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

Confidential Instructions for Waltham's Vice-President

Waltham Contracting Supply Corporation is a family-owned business that supplies contractors with building materials such as sand, gravel and concrete, as well as heavy equipment such as graders. It has a volume of about \$20 million per year and 52 employees. Waltham has been in business for 30 years but has grown substantially in the past five years, due to a local boom in construction. Foster Fuels, Inc., is also family-owned and has been doing business for two decades or more, but it is smaller than Waltham; you doubt that it has more than 20 employees.

You are outwardly calm but secretly fuming. Deciding to bring this case sounded like a no-brainer a year and a half ago. Your depot manager claimed that the entire fleet was about to self-destruct, disrupting your operations and imposing a million-dollar cost on the company. Your regular lawyer told you at the start that this was a good case: a solid claim for \$700,000, plus the threat of three times that amount in damages against Foster's insurer, Lloyds of London. Your lawyer also said that a court might even order the other side to pay your attorneys' fees. With that much hanging over their head, it seemed a sure bet that Foster and Lloyds would settle. You needed to tell the CEO something to justify the extra expense of seventy premature overhauls, and this seemed like the way to do it.

Now it looks different: The whole thing has amounted to only a couple of dozen trucks, and the mess seems pretty much cleaned up -- you haven't heard of a failure in months. You've stayed vaguely in touch with the case, but the depot manager handles the day-to-day stuff; all you really see are the bills. It looks like the lawyer they assigned you has really screwed up. There's not much doubt that the antifreeze caused the failures: You've been in this business quite a while; you've never heard of any such thing happening and neither have your mechanics. What else could have caused the damage? But it's been two years and expensive experts still can't find out what's in the antifreeze that caused your engines to rot out. You've paid two professors and a guy from a lab nearly 10 grand, and still there's no explanation for what happened. They say that the EG/PG switch that everyone was talking about at the beginning really doesn't make any difference to the trucks; PG-based antifreeze won't corrode rubber any more than EG coolant.

The experts say that the real cause is probably oil that was mixed up in the Foster antifreeze. Being well plugged-in, you've heard through the grapevine that Foster makes its antifreeze out of recycled products collected from local gas stations, then puts its private label on it. That's how

Foster undersells the majors. Too bad your manager didn't know that when he tried to save a few bucks by going to them (the Foster antifreeze cost about \$150 a barrel, while Texaco charges you \$175). Given that Foster's product was recycled crud and the wrong color to boot, it would not be surprising if it had oil in it. Oil attacks rubber much faster once it's hot, which would have happened to the fluid as soon as the engines got warm. Your experts might have tested for oil in the Foster antifreeze, but your depot manager sent the sample he collected to Texaco for some free testing and they used up or lost the entire sample. Foster turned over part of the antifreeze it took back from your depot but it turned out to be perfectly OK. Probably Foster realized it was caught with its pants down and just switched samples; it's a tight firm and the CEO could tell his people what had to be done, or just gone in and done it himself.

It looks now as if you'll have to overhaul 20-25 vehicles (21 so far), so you'll be out about \$200,000-250,000 all told. However, it's true that Waltham's practice is to run vehicles for 10-15 years, up to 500,000 miles, right into the ground, with a rebuilding every 150,000 miles, so sooner or later all the trucks would have had to have been rebuilt anyway. You do worry a little about the engines that got the crud antifreeze breaking down prematurely and unexpectedly, but most haven't shown problems and it's been two years now. Your lawyer asked you about how the risk of breakdown affected their market value, so you asked your regular dealer how much this would affect the exposed trucks' value. He said maybe \$2,500-3,000 per vehicle, but since you don't sell or trade them, how much you'd lose if you did is pretty much irrelevant. Really, the only future cost the company has to worry about is premature overhaul/rebuildings, and that problem seems to be petering out.

The issue is that while the breakdown problem is going away, the court case seems to be going nowhere, and you're paying your lawyer about \$5,000 a month for no results, almost \$60,000 in all so far. (It's also cost you a lot of overtime to have your staff look through records, etc., but the boss doesn't see staff time as tied to the case.) You'd guess it'll probably cost another 20 grand out-of-pocket to get through a trial. This has got to be a major embarrassment to Foster -- you've made sure your counterparts at other construction companies have heard about it. That ought to be worth a lot in settlement. The couple of bucks Waltham saved on the deal were in no way worth this hassle. You want to get paid and never deal with Foster antifreeze again. You don't see why you shouldn't be able to get your out-of-pocket costs for the repairs and legal expenses out of this, between what's happened to the trucks that rotted out, the damage to the others, and the possibility of a jackpot. Two years ago, you promised a win to the CEO, and you want to deliver.

Your bargaining style is to be tough. You can always concede points later, but you can never get back what you trade away early. Your experience in the construction business is that the hard-ball guys do best in the end. You might be a little more open with your lawyer, since s/he's on your side, but you won't trade away the store.