

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF IDAHO

UNITED STATES OF AMERICA

v.

CONTINENTAL FUEL COMPANY, INC.;
VERN E. HERZOG OIL COMPANY;
TRIANGLE OIL INC.;
ROBERTS TBA SERVICE, INC.;
HOWARD O. MILLER;
JAMES B. LEESE;
H. DAVID MILLER;
DON A. BLIESNER;
GEORGE W. FROST;
EARL W. PIXTON;
JAMES A. LEESE; and
EDWIN H. ROBERTS,

Defendants.

Criminal No.: CR83-40019

Filed: July 15, 1983

(15 U.S.C. § 1)

INDICTMENT

The Grand Jury charges:

I

DEFENDANTS

1. The corporations named below are hereby indicted and made defendants herein. Each of these corporations is organized and exists under the laws of the state, and has its principal place of business in the city, indicated:

<u>Corporation</u>	<u>State of Incorporation</u>	<u>Principal Place of Business</u>
Continental Fuel Company, Inc.	Idaho	Pocatello, Idaho
Vern E. Herzog Oil Company	Idaho	Pocatello, Idaho
Triangle Oil Inc.	Utah	Bountiful, Utah
Roberts TBA Service, Inc.	Idaho	Pocatello, Idaho

During all or part of the period covered by this indictment, each of these defendants engaged in the wholesale or retail marketing of gasoline, or both, in Bannock County, Idaho.

2. Howard O. Miller is hereby indicted and made a defendant herein. Howard O. Miller is doing business in his own name and is doing business as ("d/b/a") Howard O. Miller Company, with its principal place of business in Pocatello, Idaho. During all or part of the period covered by this indictment, Howard O. Miller and Howard O. Miller Company were engaged in the wholesale or retail marketing of gasoline, or both, in Bannock County, Idaho.

3. James B. Leese is hereby indicted and made a defendant herein. James B. Leese is doing business in his own name and as Leese Oil Company, with its principal place of business in Pocatello, Idaho. During all or part of the period covered by this indictment, James B. Leese and Leese Oil Company were engaged in the wholesale or retail marketing of gasoline, or both, in Bannock County, Idaho.

4. The individuals named below are hereby indicted and made defendants herein. During all or part of the period covered by this indictment, each defendant has been an officer, director, agent, employee, or representative for the corporation or company listed below and engaged in the wholesale or retail marketing of gasoline, or both, in Bannock County, Idaho.

<u>Individual</u>	<u>Corporation or Company</u>
H. David Miller	Howard O. Miller, d/b/a Howard O. Miller Company
Don A. Bliesner	Continental Fuel Company, Inc.
George W. Frost	Continental Fuel Company, Inc.
Earl W. Pixton	Vern E. Herzog Oil Company
James A. Leese	James B. Leese, d/b/a Leese Oil Company
Edwin H. Roberts	Roberts TBA Service, Inc.

5. Whenever in this indictment reference is made to any act, deed, or transaction of any corporation or company, such allegation shall be deemed to mean that such corporation or company engaged in such act, deed, or transaction by or through its officers, directors, agents, employees, or representatives while they were actively engaged in the management, direction, control, or transaction of its business or affairs.

II

CO-CONSPIRATORS

6. Various persons and firms, not made defendants herein, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance thereof.

III

TRADE AND COMMERCE

7. The defendants are engaged in the wholesale or retail marketing of gasoline, or both, in the State of Idaho. They purchase gasoline predominantly from refiners located outside of Idaho, and then resell it in Bannock County, Idaho, and other places, at wholesale to dealers operating service stations; at retail through outlets they operate or at which they control retail prices; to commercial, industrial, or farm accounts; or to some combination of the above. During the period covered by this indictment, the defendants had annual wholesale and retail gasoline sales in Bannock County, Idaho, of approximately 15,000,000 gallons.

8. During the period covered by this indictment, substantial quantities of gasoline refined in states other than Idaho were transported to the State of Idaho and sold by the defendants and co-conspirators, in a continuous and

uninterrupted flow of interstate commerce, to wholesale and retail customers located in the State of Idaho. This gasoline was transported to Idaho either by interstate petroleum products pipeline or by licensed interstate common carrier trucks traveling on interstate highways, or both. During the period covered by this indictment, the defendants and co-conspirators sold gasoline in the State of Idaho to retail customers traveling in interstate commerce, which sales affected a substantial amount of commerce. The activities of the defendants and co-conspirators, as charged herein, were within the flow of, and substantially affected, interstate commerce.

IV

OFFENSE CHARGED

9. Beginning at least as early as January 1978, and continuing until at least October 1982, the exact dates being unknown to the Grand Jury, the defendants and co-conspirators engaged in a continuing combination and conspiracy in unreasonable restraint of the aforesaid interstate trade and commerce in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

10. The aforesaid combination and conspiracy consisted of a continuing agreement, understanding, and concert of action

among the defendants and co-conspirators, the substantial terms of which were to fix, raise, maintain, and establish retail prices of gasoline in or about Bannock County, Idaho.

11. For the purpose of forming and effectuating the aforesaid combination and conspiracy, the defendants and co-conspirators did those things which they combined and conspired to do, including the following:

(a) discussing and agreeing among themselves, by telephone or in meetings in Pocatello, Idaho, held in bars, restaurants, or at the business premises of one or more of the defendants, or at other places, to coordinate retail price increases and to resolve pricing differences at gasoline stations in Bannock County, Idaho;

(b) discussing and agreeing among themselves to coordinate retail price increases and to resolve pricing differences at gasoline stations they owned, operated, or at which they controlled the retail price of gasoline, in Bannock County, Idaho; and

(c) enforcing and attempting to enforce adherence to agreed-upon retail price increases or resolutions of pricing differences, through personal visits to, or telephone conversations with, employees of companies located both in and outside of Pocatello, not named as defendants herein, that operate or did operate retail gasoline stations in Bannock County, Idaho; informing such competitors of such agreements; and enlisting, or attempting to enlist, their cooperation in the coordination of retail price increases in Bannock County, Idaho.

12. The aforesaid combination and conspiracy has had the following effects, among others:

- (a) prices of gasoline in Bannock County, Idaho, have been fixed, raised, maintained, and established at artificial and noncompetitive levels;
- (b) consumers have been deprived of the benefits of free and open competition in the purchase of gasoline in Bannock County, Idaho; and
- (c) competition in the sale of gasoline among the defendants and co-conspirators in Bannock County, Idaho, has been restrained.

VI

JURISDICTION AND VENUE

13. The aforesaid combination and conspiracy was carried out within the District of Idaho within the five years preceding the return of this indictment.

Dated:

A TRUE BILL

Foreman

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