S157001

IN THE SUPREME COURT OF CALIFORNIA

PAULINE FAIRBANKS and MICHAEL COBB,
Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES,
Respondent,

FARMERS NEW WORLD LIFE INSURANCE CO., *ET AL.*
Real Parties in Interest.

AFTER A DECISION IN THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE, CASE NO. B198538
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC305603

BRIEF OF AMICUS CURIAE CONSUMER ATTORNEYS OF CALIFORNIA IN SUPPORT OF PETITIONERS

STUART LAW FIRM
ANTONY STUART (SB 89735)
E. GLENN ANAISCOURT (SB 246642)
12400 WILSHIRE BOULEVARD, FOURTH FLOOR
LOS ANGELES, CALIFORNIA 90025
(310) 207-0070 • FAX: (310) 207-7221

ATTORNEYS FOR AMICUS CURIAE
CONSUMER ATTORNEYS OF CALIFORNIA

S157001

IN THE SUPREME COURT OF CALIFORNIA

PAULINE FAIRBANKS and MICHAEL COBB,
Petitioners,

vs.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES,
Respondent,

FARMERS NEW WORLD LIFE INSURANCE CO., *ET AL.*
Real Parties in Interest.

AFTER A DECISION IN THE COURT OF APPEAL
SECOND APPELLATE DISTRICT, DIVISION THREE, CASE NO. B198538
LOS ANGELES COUNTY SUPERIOR COURT CASE NO. BC305603

BRIEF OF AMICUS CURIAE CONSUMER ATTORNEYS OF CALIFORNIA IN SUPPORT OF PETITIONERS

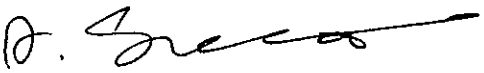
STUART LAW FIRM
ANTONY STUART (SB 89735)
E. GLENN ANAISCOURT (SB 246642)
12400 WILSHIRE BOULEVARD, FOURTH FLOOR
LOS ANGELES, CALIFORNIA 90025
(310) 207-0070 • FAX: (310) 207-7221

ATTORNEYS FOR AMICUS CURIAE
CONSUMER ATTORNEYS OF CALIFORNIA

CERTIFICATE OF INTERESTED PARTIES

Pursuant to California Rule of Court 8.208, Amicus and its counsel certify that Amicus and its counsel know of no other person or entity that has a financial or other interest in the outcome of the proceeding that Amicus or its counsel reasonably believe the justices of this Court should consider in determining whether to disqualify themselves under canon 3E of the Code of Judicial Ethics.

Dated: July 9, 2008

By: 

Antony Stuart

Attorney for Amicus Curiae
CONSUMER ATTORNEYS
OF CALIFORNIA

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

STATEMENT OF INTEREST OF THE AMICUS CURIAE

Consumer Attorneys of California is a voluntary membership organization representing over 6,000 associated consumer attorneys practicing throughout California. The organization was founded in 1962 and its members predominately represent consumers in a variety of consumer fraud, personal injury, and insurance bad faith individual and class actions. Consumer Attorneys of California has taken a leading role in advancing and protecting the rights of consumers in the courts and the Legislature.

This case is particularly important to a significant number of the organization's members, who represent victims of fraud in the sale of insurance. Thus, the organization has a meaningful interest in the issue presented.

LEGAL ARGUMENT

I.

INTRODUCTION

The Consumer Legal Remedies Act, Civil Code Sec. 1760 *et seq.* (the "CLRA") is unambiguous and clear. It announces the Legislature's intent to provide protection to a broadly defined class of persons involved in the consumption of goods and services. The Act is also clear about what activities it does *not* protect, specifically describing them in no uncertain terms. Insurance is not among those specific, excluded activities, and no credible case can be made that the Legislature intended it to be excluded.

One of the most contentious issues among the parties in this case has been what constitutes a "good" or a "service" within the meaning of the CLRA. The concept of "goods and services" comes from the field of economics. It is commonly used to capture comprehensively all production in the economy. Everything that is produced in the economy is either a good or a service. Contrary to Real Parties' contention, "contracts" do not constitute a third category, along with goods and services. Contracts are mechanisms through which the sale of goods and services flow.

The Legislature stated explicitly which transactions it intended to exclude from the broad scope of the CLRA. In doing so, it clarified that it intended the scope of the CLRA to include all other consumer transactions. Insurance is not among the Legislature's enumerated exceptions. Real Parties attempt to convince the Court that in addition to the enumerated exclusions, the Legislature intended to carve out an exclusion for the insurance industry obliquely and opaquely. They depend for this proposition upon an untenable interpretation of legislative history.

Transportation, hotel and restaurant accommodations, education, entertainment, recreation, hospital accommodations, funerals "and the like" appear in the National Consumer Act ("Model Act") definition of "services," but not in the CLRA definition. Yet there are numerous published CLRA decisions involving these industries. By Real Parties' logic, the fact that these industries are found in the Model Act definition and not in the CLRA should lead inexorably to the conclusion that the published decisions should not exist. Real Parties' attempt to explain why they nevertheless do exist rests upon a highly creative interpretation of the difference in the language of the two definitions. This interpretation depends, in turn, upon the dubious proposition that transportation, education, entertainment, funerals, and recreation are services of "a non-personal nature," as opposed to "personal services." Within the context of a consumer protection statute, however, transportation, education, entertainment, funerals, and recreation certainly *are* personal services. Real Parties' interpretation is an attempt to convince the Court that the drafters could not have meant what they said.

The Legislature enacted the CLRA to protect consumers and honest business from unscrupulous merchants. Real Parties propose that the Legislature meant to limit protection under the CLRA to purchasers of "small scale" "household goods and services," for "small amounts" of money, with "small damage claims." The CLRA is a broad, remedial, consumer protection statute, however, and its objective is clear. It provides that "[t]his title shall be liberally construed and applied to . . . protect consumers" — all consumers. Civil Code Sec. 1760. The numerous CLRA decisions that have been published in California are certainly not limited to "small scale" "household goods and services" for "small amounts" of

money and to "small damage claims."

Real Parties' arguments hinge upon the premise that the drafters created the CLRA by adapting the Model Act, line by line, as a drafting template, and that when they deleted a word from the Model Act they were striking only *ideas* to which they were averse. Real Parties present no evidence to support these assumptions. In fact, Assembly Bill 292 as originally introduced is just five pages long, while the Model Act is 182 pages long. AB 292 contains four chapters — General Provisions, Construction and Definitions, Deceptive Practices, and Remedies. The Model Act, conversely, contains nine articles divided into three parts. The literal text of the earliest known draft of the CLRA and that of the Model Act have very little in common. The Model Act was a *conceptual* underpinning for the CLRA, not a literal one as Real Parties assert.

Standing alone, an insurance policy is nothing but paper. Only when and if the insurance company's personnel take action to provide *services* does the value of the insurance inure to the customer. Providing insurance coverage involves work, and insurance companies employ labor. So contrary to Real Parties' contentions, selling insurance entails work and labor. Insurers provide services, and insurers are subject to the CLRA.

II.

THE CONCEPT OF "GOODS AND SERVICES" COMES FROM THE FIELD OF ECONOMICS

One of the most contentious issues among the parties in this case has been what constitutes a "good" or a "service" within the meaning of the CLRA. *See* Civil Code Secs. 1761, 1770(a). The concept of goods and

services comes from the field of economics. "Goods and services" is a phrase used to comprehensively capture all production in the economy. (*E.g.*, Exh. 1 (FRED H. LEONARD, MACROECONOMIC THEORY: STATIC AND DYNAMIC ANALYSES 45 (Random House, Inc. 1979) ("Think of the economy as the social institution in which services of productive inputs are transformed into the output of goods and services.")); *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 960 (2002) ("someone engaged in commerce—that is, generally, the production, distribution, or sale of goods or services . . . ."); Exh. 2 (FRED R. GLAHE, MACROECONOMICS: THEORY AND POLICY 2 (Harcourt Brace, Jovanovich, Inc., 2d ed. 1977) ("One of the most widely used measures of macroeconomic activity is the *gross national product* (GNP), which is defined as the market value of all final goods and services produced by a nation's economy during the course of a year.")); Exh. 3 (THOMAS SOWELL, ECONOMICS: ANALYSIS AND ISSUES 169 (Scott, Foresman and Company, 1971) ("Perhaps the best known concept is the Gross National Product (GNP) — the total output of the economy during a given year . . . . It represents the total flow of goods and services during the year . . .")));

Everything that is produced in the economy is either a good or a service. There is no "third category." Contrary to Real Parties' contention, "contracts" do not constitute such a third category, along with goods and services. Rather, contracts are mechanisms through which the sale of goods and services flow. Contracts no more constitute a third category of economic production than electrons constitute, with hydrogen and oxygen, a third element of water. Cases that allege fraud in the sale of insurance are based upon the insurer's deceptive *conduct*, not upon "contracts."

The concept of "goods and services" was invented by economists.

To hold that insurance is neither a good nor a service, but falls under some other, third category, would cast the phrase "goods and services" — and with it the scope of the CLRA — into a sea of ambiguity. Any such ambiguity should be resolved in the consumer's favor, to provide the consumer with quick relief. (James S. Reed, *Legislating for the Consumer: An Insider's Analysis of the Consumers Legal Remedies Act* ("Reed"), 2 PAC. L. J. 1, 8-9 (1971).)

III.

THE LEGISLATURE MADE IT CLEAR WHAT IT MEANT TO EXCLUDE FROM THE BROAD SCOPE OF THE CLRA

The Legislature stated explicitly which transactions it intended to exclude from the broad scope of the CLRA. Civil Code Section 1754 ("The provisions of this title shall not apply to any transaction which provides for the construction, sale, or construction and sale of an entire residence . . . ."); Section 1755 ("Nothing in this title shall apply to the owners or employees of an advertising medium, ..."). Not once did the Legislature use the word "insurance" in the course of enacting or commenting upon the enactment of the CLRA. (Petitioners' Opening Brief ("Opening Brief") at 29.) The Legislature certainly did not declare any intent to exclude insurance from the broad scope of the CLRA. By clarifying which transactions it meant to exclude from the scope of the CLRA, the Legislature clarified that it intended the scope of the CLRA to include all other consumer transactions. Insurance is not among the Legislature's enumerated exceptions.

Real Parties attempt to convince the Court that in addition to the enumerated exclusions, the Legislature intended to carve out an exclusion for the insurance industry obliquely and opaquely. They depend for this

proposition upon an untenable interpretation of legislative history. Specifically, they cite *Berry v. American Express Publishing, Inc.*, 147 Cal. App. 4th 224 (2007) ("*Berry*"), in which the court concluded that the extension of consumer credit falls outside the scope of the CLRA because the Legislature removed the words "money" and "credit" from early drafts in the course of editing the bill that became the CLRA.[1] Yet the legislative record does not support the proposition that the Legislature was acting with the intent to narrow the scope of the CLRA when it removed the words "money" and "credit" from early drafts.

The pre-revision draft of AB 292, the Assembly bill that became the CLRA, read:

> Any consumer who obtains credit, or purchases or leases, or agrees to purchase or lease, goods or services primarily for personal, family, or household purposes, and who thereby suffers any damage as a result of the use or employment by any person of a method, act, or practice declared to be unlawful by Section 1770 or 1771 may bring an action . . . ."

(AB 292, Amended in Senate July 10, 1970, at 4) (strikeouts ignored.) The language covered obtaining credit, purchasing goods or services, leasing goods or services, agreeing to purchase goods or services, and agreeing to lease goods or services.

This list is exhaustive. Apart from a bequest, a devise, or a gift, or through theft, one would be hard-pressed to imagine how a consumer could

---

[1] *Berry* did not involve a sale. It involved the provision of a line of consumer credit that the consumer might or might not use. *Fairbanks* involves the *sale* of insurance coverage. So the facts of *Fairbanks* are not limited to the mere qualification of a prospective buyer, as in *Berry*.

obtain a good or service any other way. Given that the statute refers initially to "Any consumer," the language "primarily for personal, family, or household purposes" is redundant. Moreover, given that the list of methods for procuring goods or services is exhaustive, the language "who obtains credit, or purchases or leases, or agrees to purchase or lease, goods or services" is also redundant. Removing these redundancies produces *the language as the Senate revised it:*

> Any consumer who suffers any damage as a result of the use or employment by any person of a method, act, or practice . . . may bring an action . . . .

Id. (strikeouts omitted). Far from expressing any intent to exclude certain types of consumer transactions from the Act, the drafters took pains to make it clear that the Act included them all. The *Berry* decision does not mention these considerations, which suggests that the court in that case may not have had the benefit of complete information regarding the legislative record.

Berry held that the removal of certain language — the words "money" and "credit" — from early drafts constituted compelling evidence that the Legislature meant to exclude the extension of consumer credit from the scope of the CLRA. "Similarly," Real Parties argue, "the Legislature did not include [certain other language —] the term 'insurance' [—] as part of the definition of 'services' in the CLRA . . . ." (Real Parties' Answer Brief ("Answer") at 31.) As stated, however, the legislative record shows that the Legislature did *not* intend to carve out an unstated exception when it removed the words "money" and "credit" in the course of editing early text. Accordingly, Real Parties' reasoning is flawed.

Since the Legislature was explicit about what it did mean to exclude from the scope of the CLRA, it would not be appropriate to infer that the

Legislature also somehow intended to provide a broad exclusion for the insurance industry without saying anything about it. The fact that the Legislature took pains to enumerate exclusions is evidence that if it had meant to grant immunity to the insurance industry under the CLRA, then it would have said so, clearly and explicitly.

IV.

TRANSPORTATION, EDUCATION, RECREATION, AND RESTAURANT ACCOMMODATIONS ARE "PERSONAL SERVICES"

Transportation, hotel and restaurant accommodations, education, entertainment, recreation, hospital accommodations, funerals "and the like" appear in the Model Act definition of "services," but not in the CLRA definition. (Opening Brief at 30.) Nonetheless, there are numerous published CLRA decisions involving these industries. *E.g., id.* at 31-32. By Real Parties' logic, the fact that these industries are found in the Model Act definition but not in the CLRA definition leads to the inexorable conclusion that there is no basis for these published decisions to exist.

Attempting to explain why they do exist, Real Parties venture that "subsection (a) of the NCA is not identical to the definition of 'services' in the CLRA. Subsection (a) of the NCA defines the services to which that provision applies as 'work, labor and other personal services,' whereas the CLRA does not use the term 'personal services.'" (Italics ignored.) "Given the specific reference to "personal services[,]" . . . , it was necessary to add subsection (b)'s reference to various "services" of a non-"personal" nature . . . to make clear that those non-personal services were within the scope of that statute's protection." (Answer at 32-33.) So, according to Real Parties,

"[b]ecause of the differences in the wording of the NCA and the CLRA, the CLRA, which is not limited to 'personal services,' did not need to enumerate the 'non-personal' services listed in subsection (b) of the NCA." *Id.* at 33.

Real Parties state no authority to support this novel interpretation. They appear to have drawn it from thin air. This creative approach rests upon the premise that transportation, education, entertainment, funerals, and recreation are services "of a non-'personal' nature," not "personal services." Yet within the context of a consumer protection statute, of course, transportation, education, entertainment, funerals, and recreation certainly *are* personal services. Real Parties' interpretation also rests upon the assumption that the CLRA drafters did not consider "services for other than a commercial or business use," which is language that they incorporated into the CLRA definition, to be the same as "personal services." There is no reasonable basis for this assumption.

Real Parties' interpretation is a sophistic attempt to convince the Court that the drafters could not have meant what they said. The reason that there are published CLRA cases involving industries mentioned in the Model Act definition of "services," but not specifically referenced in the CLRA definition, is because the Legislature intended the CLRA to apply to those industries. They include insurance.

V.

THE LEGISLATURE ENACTED THE CLRA IN ORDER TO PROTECT CONSUMERS AND HONEST BUSINESSES

The impetus that gave rise to the CLRA was the prevalence of exploitative business practices, through which unscrupulous merchants

were taking unfair advantage of vulnerable consumers when they sought to buy relatively expensive goods. *E.g.*, Reed, 2 PAC. L. J. at 5-6. Business opposed the legislation because "any legislative action would necessarily apply to *all* merchants," not just to those who were the source of the immediate concerns. *Id.* at 6 (emphasis added). Assemblyman James A. Hayes, who authored the legislation, responded that applying the CLRA to the marketplace as a whole would protect honest merchants as much as consumers since reprehensible practices gave dishonest merchants a competitive advantage over legitimate players, and Hayes anticipated that the CLRA would result in a general decline in unfair competition in the marketplace. *Id.* at 7 n.21.

Real Parties propose that the Legislature meant to limit protection under the CLRA to purchasers of "small scale" "household goods and services," for "small amounts" of money, with "small damage claims." (Answer at Point V.A.)

The CLRA is a broad, remedial, consumer protection statute, however, and its objective is clear:

> The following statement of legislative policy is of critical importance for an adequate understanding of the Consumer Legal Remedies Act: "This title shall be liberally construed and applied to . . . protect consumers against unfair and deceptive business practices" . . . . Strict adherence to this legislative intent by the courts is strongly urged, for without such adherence the Act will not provide that degree of consumer protection intended by the legislature.

Reed, 2 PAC. L. J. at 8.

Published CLRA decisions certainly are not limited to "small scale" "household goods and services" for "small amounts" of money and to

"small damage claims." *E.g.,* Opening Brief at 31-32. The Legislature acted to protect consumers – all consumers. *E.g.*, Civil Code Secs. 1760, 1761(d), 1770.

VI.

THE MODEL ACT SERVED AS A CONCEPTUAL UNDERPINNING OF THE CLRA

Real Parties' arguments hinge upon the assumption that the drafters created the CLRA by adapting the Model Act, line by line, as a drafting template, and that when they changed language included in the Model Act they intended to strike only *ideas* to which they were averse. Real Parties present no evidence to support this assumption. It is based upon a hypothetical scenario.

A comparison of the text of Assembly Bill No. 292, introduced January 21, 1970, with the text of the Model Act shows that the two are so different that it is nearly inconceivable that the latter served as a drafting template for the former. AB 292 as originally introduced is five pages long. The Model Act is 182 pages long. (By Real Parties' logic, this would mean that the Legislature intended to exclude 177 pages of language from the broad scope of the CLRA.) AB 292 contains four chapters — General Provisions, Construction and Definitions, Deceptive Practices, and Remedies. The Model Act contains nine articles divided into three parts.

Given the drafters' statements of legislative intent, the nature of the process of editing text, and the fact that the CLRA and the Model Act are and have always been — even in the earliest drafts — quite different from one another, Real Parties' hypothetical scenario is extremely unlikely. Instead, it seems far more plausible that the Model Act was a conceptual

underpinning for the CLRA, and not a literal one as Real Parties assert.

VII.

INSURERS PROVIDE SERVICES

Before an insured becomes ill, her health insurance company has negotiated special prices for the medical services that will save her life or make her well. If her doctors charge more than the negotiated rate, the insurance company adjusts the charge to ensure that the billing is correct, even if it is the insured, and not the insurer, who will pay the bill. The insurer then prepares detailed explanation of benefits reports so that the insured and her medical providers understand what is and what is not covered, who should pay, and how much will be paid.

When there is a car accident, moreover, employees of the insurance company receive the driver's call. They come to assess the damage, and they evaluate responsibility. They prepare a report, and they file it for review. They arrange alternative transportation for the driver while the driver waits for the company to process and "adjust" the claim. The insurance company repairs the car with in-house or contract mechanics, or it pays for repairs or to replace the vehicle.

Standing alone, the insurance "contract" is nothing but paper. Only when and if the insurance company's personnel take action to provide *services* does the value of the insurance inure to the customer. By its plain terms, the Legislature meant for the CLRA to protect sick people who discover, to their dismay, that that they were deceived into purchasing individual health insurance policies that cover just a fraction of their medical bills. It meant to protect homeowners displaced by fires, who find that they were deceived into purchasing homeowners' policies that do not

allow them to rebuild. *The Real Parties have provided no affirmative evidence to the contrary.*

Providing insurance coverage is work. Insurance companies employ labor. So contrary to Real Parties' contention, selling insurance involves work and labor, and insurers provide services.

VIII.

CONCLUSION

The CLRA is unambiguous and clear. The Legislature was clear regarding what transactions fall outside the scope of the CLRA, and insurance is not among them. Given the foregoing, there is no credible argument that the Legislature meant to exclude insurance from the scope of the Act.

Dated: July 8, 2008

Stuart Law Firm

By: _____

Antony Stuart
E. Glenn Anaiscourt
Attorneys for *Amicus Curiae*
Consumer Attorneys of California

CERTIFICATION REGARDING LENGTH OF BRIEF

I hereby certify that this brief contains 3,378 words, including footnotes, as established by the word count of the computer program utilized for the preparation of this brief.

I declare and certify under the laws of the State of California that the foregoing statement is true and correct and that this certification was executed on July 8, 2008 at Los Angeles, California.

By: _____

E. Glenn Anaiscourt
Attorneys for *Amicus Curiae*
Consumer Attorneys of California

EXHIBIT 1

This book is dedicated to
Nancy, Gregory, and Karen

First Edition
987654321

Library of Congress Cataloging in Publication Data

Leonard, Fred H
Macroeconomic theory.

Bibliography: p.
Includes index.
1. Macroeconomics. I. Title.
HB171.5.L45 339 78-7604
ISBN 0-394-31884-6

Manufactured in the United States of America

Cover design by Gene Krackehl
Text design by Brenda Kamen

Summary of the Production Function

Think of the economy as the social institution in which services of productive inputs are transformed into the output of goods and services. The concept that relates various output levels to various applications of inputs and technology is the production function. This concept describes a technical or engineering relationship that exists in the economy and contains in itself little of what we call economics. It is a necessary tool, however, for analyzing macroeconomic conditions.

The short-run static aggregate production function describes the relationship of output to labor inputs, given the assumption that nonlabor inputs and technology are fixed. Short-run static analysis of Part II investigates how much productive capacity, as determined by N^* and the other fixed factors, is actually being used.

KEY ASSUMPTIONS AND TOOLS OF MACROECONOMIC ANALYSIS

Profit Maximization and Pure Competition

We are going to make the usual assumptions of economic analysis that business firms attempt to maximize profits and that all markets are purely competitive. Of all the assumptions in economic theory, perhaps the assumption of profit maximization receives the most criticism—and perhaps it is the least understood. It is argued, for instance, that large firms dare not maximize profit for fear of antitrust law enforcement or that firms are more interested in other goals, such as sales revenue or market share maximization, that conflict with profit maximization. Still others argue that power in the modern corporation does not reside with owners or top management but, rather, with members of a group of workers whose interests lie in technological development and group security.[2] Finally, it is pointed out that firms simply do not have enough information concerning costs and revenue at various levels of output to be able to select that particular level that maximizes profit.

These criticisms are legitimate, and, if one wishes to study the behavior of particular real world firms, the assumption of profit maximization might prove to be too simplistic or restrictive. In the study of markets and especially of macromarkets, however, these criticisms miss the point. Any abstraction violates reality through simplification, and an assumption is nothing more than an abstraction. The assumption of profit maximization gives exactness and precision to economic theory that obviously does not exist in the real world, but, as a tool of analysis, it helps in understanding how markets work and how they interact with each other. Profits need not be pursued to their maximum by real businessmen and -women for the tool of profit maximization to be useful in economics as

[2] John Kenneth Galbraith, *The New Industrial State* (Boston: Houghton Mifflin, 1969).

EXHIBIT 2

MACROECONOMICS
THEORY AND POLICY

SECOND EDITION

Fred R. Glahe

University of Colorado

HARCOURT BRACE JOVANOVICH, INC.

New York Chicago San Francisco Atlanta

activity is called *national income accounting*. In this chapter we examine the conceptual framework on which national income accounting is based and define certain fundamental macroeconomic variables are used extensively in this book.[1]

1-2 Stocks and Flows

In this book we will be dealing with two kinds of variables: *stock* variables and *flow* variables. Stock variables are measured *at a given instant in time*, whereas flow variables are measured *over a period of time*. For example, consider a barrel of cider. When the barrel is full, say, at 12 noon on July 4, 1976, it contains 33 gallons of cider. This quantity is the *stock* of cider at this instant in time. Now suppose that the barrel is tapped and one 12-ounce glass is poured every 30 seconds. The *flow* of cider is 24 ounces per minute, or 11.25 gallons per hour. Note that the flow variable has a time dimension (gallons per hour), whereas the stock variable does not—it merely exists. In this particular example, with a flow of 11.25 gallons per hour, the stock of cider at 1 P.M. on July 4, 1976 will have declined to $33 - 11.25 = 21.75$ gallons.

Now consider the following example, in which a continuous flow is produced by a stock that does not diminish but remains constant. Suppose that on January 1 you deposit $100,000 in a savings account in a bank that pays an annual interest rate of 5% on such accounts. Your deposit, which is a stock, will pay in interest $0.05 \times \$100{,}000 = \$5{,}000$ per year. This payment of interest has a time dimension and must therefore be a flow variable. However, in contrast with our previous example, as long as the bank continues to pay 5% and you make no withdrawals from the initial deposit, the flow of $5,000 per year will continue indefinitely. If you leave all or a portion of the interest payment in the account and make no withdrawals, then the stock and flow variables will grow simultaneously.

In this example, if your entire stock of wealth were the $100,000 and you did not work, then the $5,000 per year would be your personal income. If the rate of interest remained at 5%, you would be able to consume $5,000 of goods and services per year permanently.

1-3 National Income

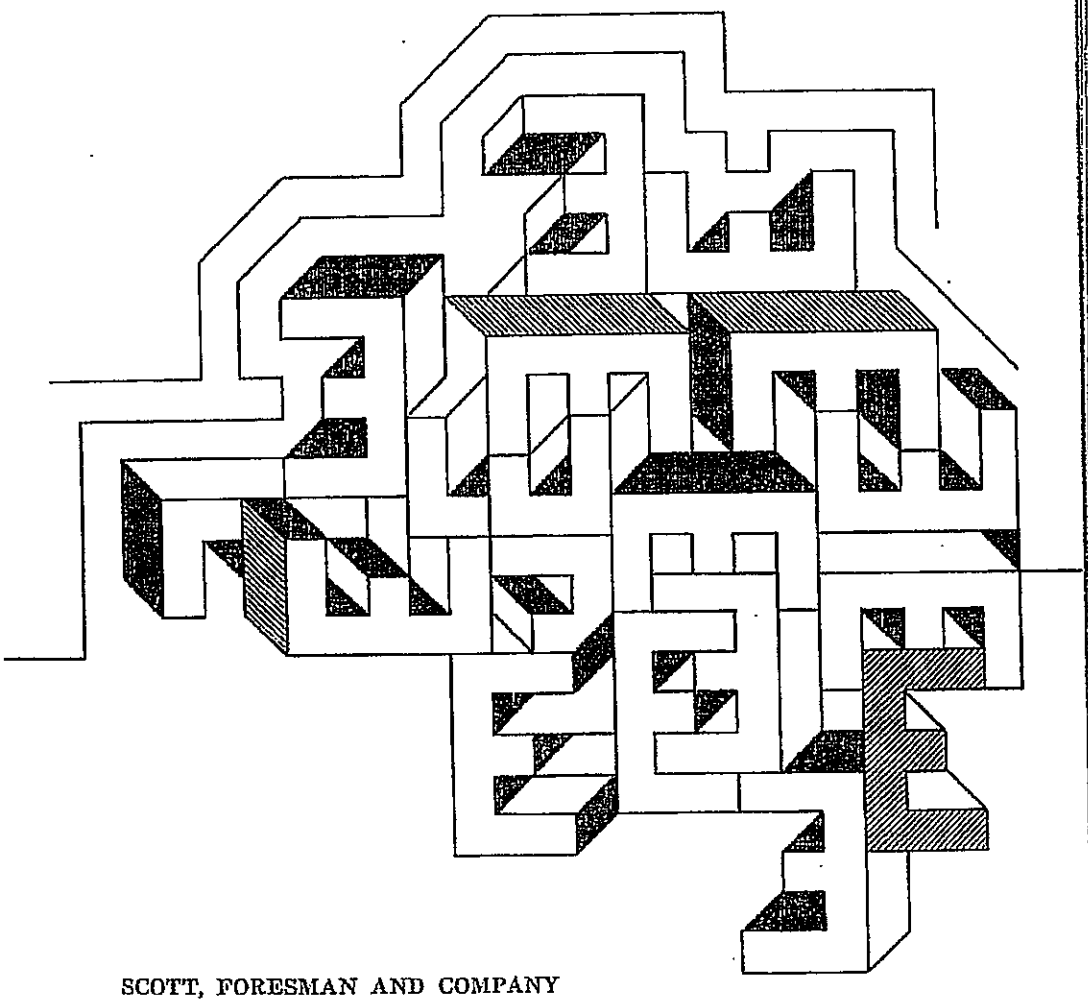
One of the most widely used measures of macroeconomic activity is the *gross national product* (GNP), which is defined as *the market value of all final goods and services produced by a nation's economy during the course of a year*. Because the

[1] We do not attempt to explain all the details and complexities involved in the actual measurement of these variables. To do so adequately would require the equivalent of a small book. The following references are suggested: J. P. Powelson, *Economic Accounting* (New York: McGraw-Hill, 1955), Chapters 14–20; U.S. Department of Commerce, *National Income: A Supplement to the Survey of Current Business* (Washington, D.C.: U.S. Government Printing Office, 1954); and U.S. Department of Commerce, *U.S. Income and Output: A Supplement to the Survey of Current Business* (Washington, D.C.: U.S. Government Printing Office, 1958).

EXHIBIT 3

ECONOMICS
Analysis and Issues

Thomas Sowell
University of California, Los Angeles



SCOTT, FORESMAN AND COMPANY
Glenview, Illinois London

tries such as Great Britain, where international economic relations are very important, its significance is obviously greater. The necessary equality of income and output applies rigidly only to the world as a whole, but for most countries it applies well enough to serve as a first approximation. For theoretical simplicity, the analysis here proceeds as if dealing with a "closed economy" having no trade with other countries.

Although the income and output streams are equal to each other, both can expand or contract according to changes in spending and production. National income is just sufficient to buy the national output, but if people choose not to spend it all, aggregate demand will be insufficient and some of the output will remain unsold. If people choose to spend more than their current income, aggregate demand will be excessive and prices and/or output will tend to rise (inflation).

The concept of equilibrium applies not only in the study of individual sectors of the economy ("microeconomics") but also in the study of the economy as a whole ("macroeconomics"). Just as the quantity demanded may be greater or less than the quantity supplied for a given commodity at a given price, so the *aggregate* quantity of goods demanded may be greater or less than the aggregate quantity of goods supplied, at a given general price level. The causes and consequences of this are analyzed in the theory of national income (output) determination in Chapter 11. The immediate task here is to analyze some of the concepts used in measuring national output (income), and their usefulness for various purposes, as well as some of the ways of trying to measure the cost of living and to make comparisons of output over time and between different nations at a given time.

NATIONAL INCOME (OUTPUT)

Perhaps the best known national income concept is the Gross National Product (GNP)—the total output of the economy during a given year (Table 10-1). It represents the total flow of goods and services during the year, valued at whatever prices happened to prevail. A national income concept preferred by economists is the Net National Product (NNP), which subtracts from the GNP the capital and inventory used up in producing the annual output. If

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 12400 Wilshire Boulevard, fourth floor, Los Angeles, California 90025.

On July 9, 2008, I served the foregoing document described as:

BRIEF OF AMICUS CURIAE CONSUMER ATTORNEYS OF CALIFORNIA IN SUPPORT OF PETITIONERS

on the parties interested in this action by enclosing true copies thereof in sealed envelopes with postage thereon fully prepaid, and by providing for their deposit in the United States Mail at Los Angeles, California, addressed as follows:

SEE ATTACHED SERVICE LIST

(BY MAIL)

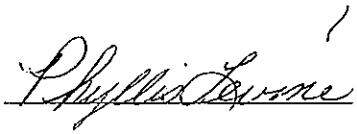
_____ I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

__X__ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed July 9, 2008, at Los Angeles, California.

Phyllis Levine



SERVICE LIST
***Fairbanks v. Superior Court*, Supreme Court Case No. S157001**

California Court of Appeal
Second Appellate District, Division Three
300 So. Spring Street, 3rd Floor
Los Angeles, CA 90014-1213

Case No. B198538

Clerk, Los Angeles Superior Court
for delivery to: Hon. Anthony Mohr, Dept. 309
Central Civil West Courthouse
600 Commonwealth Avenue
Los Angeles, CA 90005

Case No. BC305603

Richard R. Mainland
Peter H. Mason
Fulbright & Jaworski LLP
555 South Flower Street, 41st Floor
Los Angeles, California 90071
(213) 892-9200/Fax: (213) 892-9494

Counsel for Defendants
Real Parties in Interest
Farmers New World Life
Co. and Farmers Group

Robert S. Gerstein
Law Office of Robert S. Gerstein
12400 Wilshire Boulevard, Suite 1300
Los Angeles, California 90025
(310) 820-1939/ Fax: (310) 820-1917

Counsel for Plaintiffs and
Petitioners Pauline Fairbanks
and Michael Cobb

David L. Sheller
The Sheller Law Firm, PLLC
810 Waugh Drive, 2nd Floor
Houston, Texas 77019
(713) 961-0291/Fax: (713) 961-5112

Counsel for Plaintiffs and
Petitioners Pauline Fairbanks
and Michael Cobb

John A. Girardi
Girardi & Keese
1126 Wilshire Boulevard
Los Angeles, California 90017
(213) 977-0211/Fax: (213) 481-1554

Counsel for Plaintiffs and
Petitioners Pauline Fairbanks
and Michael Cobb

Scott A. Marks
The Marks Law Firm
21900 Burbank Boulevard
Third Floor
Woodland Hills, California 91367
(818) 591-3025/Fax: (818) 992-3181

Counsel for Plaintiffs and Petitioners Pauline Fairbanks and Michael Cobb

Kim E. Card
Law Offices of Kim E. Card
1690 Sacramento Street
Berkeley, California 94702
(310) 684-5863/Fax: (510) 644-2659

Counsel for Amicus Curiae United Policyholders

Harvey J. Rosenfield
Attorney at Law
1980 Ocean Park Blvd.
Santa Monica, California 90405
(310) 392-0522/Fax: (310) 392-8874

Counsel for Amicus Curiae Consumer Watchdog

Mitchell C. Tilner
Robert H. Wright
Horvitz & Levy LLP
15760 Ventura Boulevard, 18th floor
Encino, California 91436
(818) 995-0800/Fax: (818) 995-3157

Counsel for Amicus Curiae American Council of Life Insurers; American Ins. Assn.; Assn of California Ins. Cos; Assn of Calif. Life & Health Ins. Cos.; Pacific Assn of Domestic Ins. Cos. and Personal Ins. Federation of California