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## MEMORANDUM IN OPPOSITION

March 1, 2011

**A.1845 Rosenthal (On Assembly Calendar)**

**S.707 Savino (Senate Consumer Protection)**

***AN ACT to amend the general business law, in relation to prohibiting debt collectors from collecting or attempting to collect a debt owed by a deceased debtor that is known to be deceased***

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association (NYBA). NYBA is comprised of the community, regional and money center commercial banks and thrift institutions doing business in New York State. In aggregate, members of the Association employ approximately 200,000 New Yorkers and hold more than \$9 trillion in assets.

The New York Bankers Association opposes this legislation that would require any principal creditor or third-party debt collector who is communicating with any person for the purpose of attempting to collect a debt incurred by a deceased debtor when that is not legally obliged to pay, to inform the person with whom the communication occurs that he or she is not legally obligated to pay the debt. It would also prohibit any misrepresentation about the responsibility of the person communicated with to pay the debt. We do not object to prohibiting intentional misrepresentation, but believe that this legislation will inadvertently relieve a number of debtors of their responsibilities for satisfying debts, asks creditors to take actions on the basis of information they could not possibly have, and will make it less likely that the families or friends of decedents who wish satisfy decedents' obligations will be able to do so. We urge that this bill be held.

This legislation would add a new section to the General Business Law precluding creditors and debt collectors from contacting persons with respect to the debt of a deceased debtor without informing them that they are not legally required to pay the debt. It would define the terms debt and debt collector and add criminal penalties, a private right of action and the opportunity for class action for its violation.

This legislation would impose on creditors an impossible burden, requiring that they identify for each individual who might be subject to a communication with regard to the collection of a debt owed by a deceased debtor, whether the individual has any responsibility to pay the debt. First, routine debt collection notices sent before the creditor receives notice of the death of a decedent may be received after the decedent's death. Without the notice described in this legislation, the creditor will be subject to criminal and civil penalties. Second, although the estate of a decedent is often responsible for the decedent's debts, the creditor will not know until probate who the

decendent's executor or administrator is, making it impossible for the creditor to determine whether a communication sent to a relative, such as a spouse, who might logically be an administrator or executor, is in compliance with this provision. Third, co-obligors or guarantors on a note may remain obligated after the death of a decedent, but the obligation may not be readily apparent. Finally, the families of decedents, out of a sense of responsibility or obligation, may want to clear the decedent's debts. The inability of a creditor to communicate with them or the limitations imposed by the notice will serve as a disincentive to do so.

This legislation appears to assume that the non-payment of obligations is without consequence. In fact, whenever a debt is not satisfied, a creditor must ensure that all other debtors make up the short-fall through higher interest rates or fees. Thus, this legislation will impose on other New Yorkers the responsibility to pay the debts contracted in good faith by deceased debtors.

For these reasons, the New York Bankers Association *opposes* this legislation and urges that it be *held*.

**Respectfully Submitted,**

**WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP**