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MEMORANDUM IN OPPOSITION

February 25, 2009

**A4460 Weinstein (Assembly Ways & Means)
S1755 Schneiderman (Senate 3rd Reading Calendar)**

AN ACT to amend the civil practice law and rules, in relation to restraint, execution, income execution and levy procedures

This memorandum in *opposition* is written on behalf of our client, the New York Bankers Association. The Association 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 250,000 New Yorkers and hold more than \$9 trillion in assets.

The amendment would exempt the State of New York, and its agencies and local governments, from the new law. It would also exempt judgments to enforce child support, spousal support, alimony and maintenance obligations. This legislation is impossible for depository institutions to comply with, would require all depository institutions to establish a dual track for responding to legal executions, and would establish two classes of creditors, one with greater rights than another. It also has a retroactive effective date that would immediately upon enactment make every depository institution in the State that has received any restraining notice, execution, income execution or levy from one of the newly exempt creditors in violation of the law.

Chapter 575 of the Laws of 2008 was effective on January 1, 2009. It required every depository institution in the State to completely revamp its systems of responding to legal process in order to ensure that their customers could benefit from the new \$2,500 and \$1,716 exemptions provided in the Chapter Law. These revamps involved reprogramming computer systems and retraining personnel. This legislation would require a return to the old systems and would require banks to maintain two different and incompatible systems for responding to restraining notices, and other executions. Restraining notices received from the State or one of its agencies or instrumentalities would be required to be responded to without regard to the new exemptions, but restraining notices from other creditors - other than creditors for child support, spousal support, alimony and maintenance - would be subject to the new exemptions.

Restraining notices do not on their face indicate the subject matter of the litigation giving rise to the restraint. It will thus be impossible for a financial institution to determine that a restraining notice applies to debts for child support, spousal support, alimony or maintenance without recourse to court records. Although the language of the restraining order itself will be amended to delete references to the \$2,500 and \$1,716 exemptions, the failure of the orders to reference the basis for the deletion will make it impossible for depositories to readily distinguish between the types of creditors requesting restraint. Although this problem will be minimized with regard to service on behalf of the State or its agencies or instrumentalities, it will not be eliminated, because not all names of New York State municipalities are easily distinguished from the names of local businesses.

Banks and thrifts must already respond to literally hundreds of thousands of information subpoenas, restraining notices and other legal process every month. By establishing a dual-track system for responding to legal process, this legislation will virtually guarantee that depository institutions will have difficulty meeting the deadlines in the CPLR and ensuring that the right response is provided to the right types of process. Thus, this bill will make responding to legal process much more costly and error-filled. It will also provide certain creditors with greater legal protections than others – at a cost to consumers estimated in the sponsors’ memorandum at \$45 million per year.

Finally, if this legislation is enacted as proposed, virtually every bank and thrift that has already received a restraining notice, execution, income execution or other levy from the State, one of its agencies or instrumentalities or a creditor for child support, spousal support, alimony or maintenance will immediately be in violation. That is because Chapter 575 provides that all such notices are void if the amount in the account is below the exemption amount. This legislation will restore the validity of these restraining notices and other legal process, retroactive to January 1, making the banks and thrifts that had failed to restrain funds in violation of the CPLR.

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