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MEMORANDUM IN OPPOSITION

February 5, 2010

A8735 Weinstein (On Assembly Calendar #663)

AN ACT to amend the civil practice law and rules, in relation to increasing the property values which are exempt from the satisfaction of a money judgment; and to amend the debtor and creditor law, in relation to increasing the exemptions in bankruptcy

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.

This legislation would greatly increase the value of real and personal property exempt from the satisfaction of money judgments and increase the level of exemptions from bankruptcy under the State's Debtor and Creditor Law. It would also allow New Yorkers to choose the exemptions available under the federal bankruptcy code in place of the State's exemptions and index the State's exemptions to inflation. This bill would limit the amount of credit available in the State, encourage additional bankruptcies, and shortchange creditors who had advanced their funds and the funds of their shareholders in good faith.

Only five years ago, New York increased the amount of real property exempt from the satisfaction of money judgments from \$10,000 to \$50,000, an amount that is sufficient in most of the State to preserve an entry-level property and, in many areas, substantially more. This legislation would triple the homestead exemption in down-State areas and raise it substantially in the balance of the State. In addition, the State provided two entirely new exemptions for funds in direct deposit accounts and in other bank accounts only two years ago. This legislation would dramatically increase virtually every other exemption, allowing debtors to escape with literally tens of thousands of dollars of personal property liability for debts they have contracted. It would also create new categories of exemptions for computers and cell phones, entitling and possibly promoting debtors to make expensive purchases of these items immediately prior to defaulting on their obligations. It would allow defaulting debtors, in some instances, to retain property whose cost would put it out of the reach of average New Yorkers.

When a lender extends credit, it relies on the law in effect at the time of the credit extension to ensure repayment. Dramatically increasing exemptions will cause creditors to reexamine their underwriting guidelines, limiting the numbers of consumers and small

businesses deemed creditworthy. At a time when virtually every public policymaker is expressing concern about the reduction in available consumer and small business credit, this legislation would cause a further contraction in credit availability. New York's economy, already battered in the current recession, can only suffer further by this credit contraction.

In addition, consumers and businesses respond to economic incentives. Providing a much higher level of exemption from the satisfaction of money judgments and from bankruptcy will provide an incentive to consumers who, and small businesses which, might otherwise continue to honor their credit obligations. The validity of contract is one of the founding principles of the nation's economy. If consumers and businesses do not feel bound to honor their contracts and if creditors cannot rely on the validity of their contracts, the State's economy will become further troubled.

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