



Partner Catherine Brennan quoted in Debtwire and Law360 on OCC Fintech charter suits

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On September 3, a D.C. federal judge threw out a case brought by the Conference of State Bank Supervisors (CSBS) against the Office of the Comptroller of the Currency (OCC) that sought to shut down the fintech charter program launched by the OCC last year. With no charters issued nor any applications filed, U.S. District Judge Dabney Friedrich granted the OCC's motion to dismiss. However, the merits of CSBS' objections still remain unresolved, leaving the door open to bring another legal challenge if the OCC ever grants a charter.

Commenting for *Law360*, Hudson Cook Partner [Catherine Brennan](#) noted, "Any fintech company that is contemplating the charter knows that it is going to be hit with a lawsuit, or at least be tangentially involved in a lawsuit as soon as it makes public that it's filing for the charter. People are watching and considering whether it's worth the headache involved."

In another filing last week, U.S. District Judge Victor Marrero mostly declined the OCC's motion to dismiss a case filed by the New York Department of Financial Services (NYDFS). According to *Debtwire*, he agreed to extend the OCC's deadline to respond to the NYDFS complaint. "A key part of the NY order is that the judge decided that the OCC was not entitled to deference on the interpretation of the National Bank Act," said Catherine. The OCC argued that a special purpose bank can conduct one of the three core banking functions: receiving deposits, paying checks or lending money. But Judge Marrero narrows the definition of the "business of banking," Brennan said. "The NY order said that it is unambiguous that taking deposits is an indispensable part of the business of banking. If that is upheld, the fintech charter will become less attractive as an option," she said.

Catherine assists national and state banks, investment banks, consumer and commercial finance companies, mortgage bankers, installment lenders and other licensed lenders in the development and maintenance of nationwide consumer and commercial lending programs. She engages in credit due diligence on behalf of investors in fintech firms, bank partnership platforms, small business lenders, merchant cash advance companies, consumer finance companies, title loan companies and payday lenders.

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