

Deutsche Bank Securities, Inc. v. Montana Board of Investments
Case Summary

FAST FACTS:

A recent New York State Court of Appeals decision has further expanded personal jurisdiction. Individuals and companies located outside of New York state who conduct business within the State through electronic means of communication are considered to be engaged in commerce in New York and therefore, subject to the reach of New York courts.

The E-Discovery & Records Management attorneys of Jaeckle Fleischmann have summarized the details and implications of a recent New York Court of Appeals ruling below. For more information, please contact a member of our E-Discovery & Records Management practice group listed on page two.

The recent decision in *Deutsche Bank Securities, Inc. v. Montana Board of Investments* marks a significant development for personal jurisdiction in New York state courts. The decision, which came from New York's highest court, the New York Court of Appeals, on June 6, 2006, concerns a failed bond trade between plaintiff Deutsche Bank Securities, Inc. (DBSI) and defendant Montana Board of Investments (MBOI). MBOI is a Montana state agency and DBSI is a Delaware corporation with headquarters in New York. Because the parties' dealings occurred exclusively through an instant messaging service, a question of personal jurisdiction was presented. Like most plaintiffs, DBSI commenced suit in its preferred venue (New York); like many defendants, MBOI, which had set foot in New York only electronically, resisted being haled into a distant forum on that basis alone.

Historically, a state court will exercise jurisdiction, or subject someone to its courts, only if that person resides within its geographic borders. However, New York, like most other states, has what is commonly referred to as a long-arm statute, which allows jurisdiction to be exercised over someone located outside of the borders of New York if he or she conducts business within the state. The New York courts previously extended this to include not only those who physically enter the state to conduct business, but also to those who engage in commerce by telephone or other traditional means of electronic communication.

Recognizing the expansion of national markets for commercial trade, as well as the breadth of technological communication available today, New York's highest court has now expanded the definition of those doing business in New York. Based on this decision, those who transact business

in New York using instant messaging or other electronic means are likely to be considered conducting business in New York, and may, therefore, be subject to the reach of the New York courts.

With this decision, New York joins a number of other states that have already adopted this extension of personal jurisdiction. This decision serves as an important reminder to exercise caution when engaging in e-commerce, including email or instant messaging. As the *Deutsche Bank* decision demonstrates, it is far too easy to lose your bearings when navigating through cyberspace.

If you have any questions or would like more information regarding the recent decision in *Deutsche Bank Securities, Inc. v. Montana Board of Investments* discussed in this Alert, or have any other questions about E-Discovery & Records Management, please contact any member* of our E-Discovery & Records Management Practice Group:

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