

## Ninth Circuit: What Happens When the Plaintiff is not a Plan “Participant”? Move to Dismiss for Lack of Subject Matter Jurisdiction? Think Again.

By [Mike Reilly](#) on January 25th, 2012

Courts had dismissed ERISA cases for *lack of subject matter jurisdiction* when the plaintiff was not a plan “participant, beneficiary or fiduciary.” Harris v. Provident Life Accident Ins. Co., 26 F.3d 930, 934 (9th Cir. 1994).

**Not any more in the Ninth Circuit.** The issue is now merely an element of the ERISA case. Rather than a subject matter motion, attorneys in the Ninth Circuit are advised to fashion their motions to dismiss as a “failure to state a claim.”

Here’s the case of [Leeson v Transamerica Disability Income Plan](#), \_\_ F.3d \_\_ (9th Cir. January 23, 2012) ( “*The issue of participant status goes to the merits of the claim and not to the subject matter jurisdiction of the district court.*”)(Overrules prior Ninth Circuit precedent including Curtis v. Nevada Bonding Corp. (9th Cir. 1995) 53 F. 3d 1023, 1027)).

**FACTS:** This case has a long sordid history, but here are some key facts. While Leeson was employed with Transamerica, he participated in the long term disability ERISA plan. Plan documents provided that “*if an Eligible Employee is on an unpaid leave of absence, his or her status as a Long-Term Participant shall be suspended and he or she shall not be eligible for Long Term Benefits.*”

Leeson was injured in a car accident and applied for disability benefits in 1996. Prudential, the plan administrator, deemed him eligible and paid disability benefits for four years. Benefits were denied and Leeson sued. In 2008 the Ninth Circuit determined the *de novo* standard of review should apply, and remanded the case to the district court.

On remand the Plan argued for the first time that Leeson was not a plan participant because he had been on unpaid leave when he applied for disability benefits. The Plan then moved to dismiss the case for lack of subject matter jurisdiction, relying on Franchise Tax Bd. v. Const. Laborers Vacation Trust, 463 U.S. 1, 21 (1983)(district court lacked subject matter jurisdiction because ERISA is “limited to suits brought by certain parties....”).

### **TRIAL COURT: GRANTED MOTION TO DISMISS FOR LACK OF SUBJECT MATTER**

**ISSUE:** Whether Plaintiff’s status as a plan participant goes to the merits of the ERISA claim, or implicates federal subject matter jurisdiction?

**NINTH CIRCUIT REVERSES, OVERRULES PRIOR PRECEDENT and HOLDS:** “The issue of participant status goes to the merits of the claim and not to the subject matter jurisdiction of the district court.” Op. at 8

**RATIONALE:**

1. Federal courts have broad adjudicatory authority. A claim should not be dismissed for lack of subject matter if “the right of the petitioners to recover under this complaint will be sustained if the Constitution and laws of the United States are given one construction and will be defeated if they are given another.” Op. at 5.
2. ERISA authorizes a plan participant to initiate a civil action. A “participant” includes former employees who have “a colorable claim that...she will prevail in a suit for benefits.” Op. at 6.
3. The key case relied on by the court is Vaughn v. Environmental Management, 567 F.3d 1021, 1024 (9th Cir. 2009)(A motion for dismissal because Plaintiff is not a plan participant is properly viewed as a motion for failure to state a claim and not a dismissal for lack of subject matter jurisdiction.)
4. Nothing in ERISA requires that a plaintiff assert anything more than a colorable claim that he or she is a participant to assert an ERISA claim. Op. at 7.
5. “Because Leeson’s ERISA claim rises and falls on the district court’s determination of participant status, the construction of the term “participant” involves a merits-based determination, even if it results in dismissal.”