

## **Citrin Lives! Dist. Ct. applies the agency theory of access in a post-Nosal Computer Fraud and Abuse Act case**

The Intended Use Theory of access under the [Computer Fraud and Abuse Act](#) (“CFAA”) has been all the rage since the Ninth Circuit handed down its opinion in *United States v. Nosal* but that doesn’t mean the Agency Theory has gone by the wayside. Just last week a district court used the Agency Theory (set forth by the Seventh Circuit in *International Airport Centers, LLC v. Citrin*) to determine that an employee, who after changing loyalties from his existing employer to another, accessed his then-employer’s computer and deleted data from the computer before turning it back in, destroyed data without authorization in violation of the Computer Fraud and Abuse Act.

The case is *LKQ Corporation v. Thrasher*, 2011 WL 1984527, — F. Supp.2d — (N.D. Ill. May 23, 2011) and in it the court stated: **“no allegation specifically noting that LRQ restricted his access to his company computer is necessary to state a Computer Fraud and Abuse Act claim. LKQ’s allegation of breach of duty are enough to properly allege that Thrasher lost his authorization to access his company computer. See *Int’l Airport Ctr. L.L.C. v. Citrin*, 440 F.3d 418, 420-21 (7th Cir. 2006)”** and, on this basis, denied Thrasher’s Motion to Dismiss.

It is worth noting that, though Thrasher did have a contractual agreement with LKQ that prohibited him from competing with LKQ, the agreement did not define the permissible uses of LKQ’s computer system or place any restrictions thereon. In the Seventh Circuit, which follows the *Citrin* Agency Theory of access, this was still a violation of the CFAA. Had this occurred in the Ninth, Eleventh, or Fifth Circuits, it probably would not have been as they follow the Intended Use Theory as set forth in *United States v. Nosal*, *United States v. Rodriguez*, and *United States v. John*, respectively. For a more thorough explanation of this go [HERE](#).

**What does this teach you if your company has a computer that others access?**

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