



IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERISK ANALYTICS, INC. and)
LENNY MERGER SUB, INC.,)
)
Plaintiffs/Counterclaim)
Defendants Below,) No. 369, 2026
Appellants,)
)
Court Below: Court of Chancery of
v.) the State of Delaware,
) C.A. No. 2026-0023-BWD
EXACTLOGIX, INC., d/b/a)
ACCULYNX.COM, a Delaware)
corporation, and RICHARD SPANTON,)
JR., in his capacity as seller)
representative,)
)
Defendants/Counterclaim)
Plaintiffs Below,)
Appellees.)

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NATURE OF THE PROCEEDINGS

In July 2025, Verisk Analytics, Inc. and ExactLogix, Inc. (AccuLynx) decided to merge. The parties wanted the deal to close quickly, or else potentially not at all. So their Agreement and Plan of Merger (Merger Agreement) provided that either side could terminate the deal if it had not closed by a specified date, which was ultimately extended to December 26, 2025 (Termination Date). Ex. A, Opinion (Op.) 12, 32. Unfortunately, the parties were not able to close quickly because the Federal Trade Commission (FTC) subjected the deal to a lengthy review process (Second Request) that made it impossible to close by the Termination Date. Verisk, which had engaged in extensive efforts and spent millions of dollars trying to convince the FTC to clear the merger, was crestfallen. But the cost and increased uncertainty of a lengthy FTC review meant that the merger was no longer the best option for Verisk and its stockholders. So, consistent with its rights both sides bargained for under the Merger Agreement, Verisk invoked its right to terminate the merger.

But AccuLynx still wanted the deal to close. So it argued that Verisk's termination was invalid because Verisk had materially breached the Merger Agreement by purportedly sabotaging the parties' discussions with the FTC. This was simply untrue.

After a four-day trial, the Court of Chancery largely rejected that argument, detailing the extensive efforts Verisk undertook to avoid an FTC review and recognizing that AccuLynx's position amounted to little more than "second-guessing Verisk's [document] review efforts." *See* Op. 31, 33, 38-39, 42. But the court nonetheless held that Verisk's termination was invalid based on a single email a Verisk executive sent to a different company, ServiceTitan, one week after Verisk signed the Merger Agreement. Op. 56. In that email, the executive explained that Verisk was ending discussions to develop a customized software integration for ServiceTitan, one of AccuLynx's competitors. Op. 9.

The court concluded that the email was "willful conduct" that was the "primary cause" of the merger's failure, because the FTC later included it in its investigation when issuing and requiring full compliance with the Second Request. Op. 50-56. The court thus concluded that Verisk had no right to terminate the agreement under a caveat to the Merger Agreement's termination provisions. Op. 56. And in ordering Verisk to specifically perform and comply with the FTC's Second Request, the court also granted AccuLynx something it never bargained for and affirmatively sought to avoid in negotiations: an indefinite extension of the Termination Date. Those conclusions rested on multiple serious legal errors that essentially rewrote the parties' contract and injected uncertainty over the definition

of established legal terms and ordinary English words. The Court should reverse the Court of Chancery’s judgment.

Section 9.1 of the Merger Agreement provides that no party may terminate if (a) it is “in material breach” or (b) its “willful conduct[] has been the primary cause of ... the failure to satisfy any conditions to [its] obligations.” Op. 13. On August 5, 2025, Verisk sent an email to one of AccuLynx’s competitors—ServiceTitan—declining to design a custom software integration solution, although Verisk and ServiceTitan would agree on a standard integration solution about five weeks later. Op. 9. The FTC learned of the email later from ServiceTitan during the course of calling multiple AccuLynx competitors. The FTC thought the email supported its anticompetitive theory, because it thought Verisk might offer customized software solutions only to AccuLynx after the deal. Op. 19. The question here is whether that August 5 email to ServiceTitan was “willful conduct” that was “the primary cause” of the merger’s failure to close by the Termination Date.

It was not. Start with the contractual language. In the civil context, the term “willful conduct” refers to conduct that the actor knows or should know will cause a particular negative consequence. That’s the understanding of “willful” that the legal dictionaries, this Court, the Supreme Court, and the Delaware Legislature have all adopted. *See, e.g., Willful, Black’s Law Dictionary* (12th ed. 2024); *Jardel Co. v. Hughes*, 523 A.2d 518, 530 (Del. 1987); *Safeco Ins. Co. of America v. Burr*, 551

U.S. 47, 57 (2007); 6 *Del. C.* § 2507A(a)(3). It is also the understanding the Merger Agreement adopts elsewhere when defining the term “willful breach.” Op. 12 n.37. So the term “willful conduct” means conduct a party knew or should know would cause “failure to satisfy any condition to the obligations of the Parties.” Op. 13. And the term “the primary cause,” as any English speaker knows, refers to the most important cause of a particular outcome. *See, e.g., Primary, Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/primary>.

The Court of Chancery’s post-trial findings and the undisputed record show that the email to ServiceTitan was neither “willful conduct” nor the “primary cause” of the FTC’s merger-delaying investigation under the correct understanding of those terms. The court confirmed that Verisk thought the deal presented little-to-no antitrust risk at the time the August 5 email was sent and that the FTC’s eventual theory of competitive harm was novel and unforeseeable. Op. 11-12, 53-54. The email thus could not have been “willful conduct” because Verisk had no reason to believe it would cause the failure to satisfy a closing condition—FTC approval. What is more, the record—including testimony from AccuLynx’s expert and one of its lead attorneys—shows that the email was not the cause of the FTC investigative steps that ultimately sunk the merger because the FTC only took those steps after developing substantive antitrust theories based on speaking with multiple AccuLynx competitors. A783, A831-A832. Instead, the FTC’s conceded “novel” theory of

anticompetitive harm and its need to investigate this theory caused the merger's delay, not a single email.

The Court of Chancery's contrary conclusion rests on two fundamental legal errors. The court concluded that (1) conduct is "willful" if it is volitional or voluntary, and (2) the term "primary cause" is synonymous with the tort-law concept of proximate, or but-for, cause. Op. 47, 49-50. But both legal conclusions lack merit and create profound uncertainty for transactional planners. The court's definition of "willful" contradicts numerous dictionaries, judicial decisions, jury instructions, statutes, and even other provisions in the Merger Agreement clarifying that willfulness requires a wrongful state of mind amounting to knowledge or recklessness when used in a civil legal context. *Infra* pp. 20-24. And the court's definition of "primary" scraps the term's ordinary meaning based on inapplicable tort-law principles, allowing the court to find the pre-investigation August 5 email was "the primary cause" even though the FTC's admittedly novel theory of harm and related investigatory steps were far more important to the merger's delayed closing. *Infra* pp. 32-34.

Correcting the Court of Chancery's legal errors and applying the correct standard to the facts makes clear that Verisk validly terminated the Merger Agreement on grounds the parties contemplated it could. While AccuLynx also argued that Verisk materially breached the agreement by failing to use commercially

reasonable efforts to address the FTC's theories, and the court declined to "definitively" resolve that issue, Op. 42, there is no need to remand. The court's factual findings detailing the extensive efforts and costs Verisk undertook to try to get the merger closed, and its criticisms of AccuLynx's breach arguments, make clear that Verisk used reasonable efforts to cooperate with AccuLynx to secure FTC approval, and AccuLynx's contrary arguments amount to nothing more than second-guessing Verisk's strategy for responding to the FTC's information requests. *Id.*

The Court of Chancery's decision, if not reversed, would also have profound policy implications for Delaware law. No corporation, director, officer or practitioner will understand the meaning of "willful" under Delaware law because the court's definition ignores the common understanding of this legal term and renders it meaningless by equating "willful conduct" with any corporate act. They will not know how to allocate responsibility for paramount causes because the simple English phrase "the primary cause" now succumbs to legal "but for" causation principles. And they will fear the power of the court to ignore the bargain of sophisticated parties and order relief that distorts the parties' agreement beyond recognition: here, granting AccuLynx a Merger Agreement with no definite Termination Date that is entirely dependent on an FTC investigation with no definitive timeline.

The Court should reverse the Court of Chancery's judgment and confirm that Verisk properly terminated the Merger Agreement.

SUMMARY OF ARGUMENT

1.0 Sending the August 5 email is not “willful conduct” under the Merger Agreement and the Court of Chancery’s holding rests on a critical legal error.

1.1 The Merger Agreement does not define the term “willful conduct,” but “willful” is a legal term of art that incorporates a sizable body of law defining it in various contexts, each of which states that willful requires the party to know, or have reckless disregard for, the consequences of the “conduct” at issue—here, “the failure to satisfy any condition[s] to the obligations of the Parties.” Op. 13. The Court of Chancery’s definition, which equates willful with volitional, ignores this law and the context and structure of the Merger Agreement, and renders the word meaningless. This interpretation of “willful” makes Delaware an outlier and creates uncertainty for M&A practitioners who, unless the decision is overturned, will be afraid that any innocent corporate act will risk breach of contract and the invalidation of a corporation’s rights.

1.2 The Court of Chancery’s factual findings show that the August 5 email was not “willful conduct” under the correct definition of the term. The court found that (a) when the email was sent, “Verisk believed ... that the Merger presented minimal antitrust risk,” Op. 51; (b) the antitrust theory that prompted the FTC’s investigation was novel and unforeseeable, Op. 53-54; and (c) Verisk “did not know the August 5 Termination Email would attract FTC scrutiny” and “did not expect its

decision would raise competition concerns,” Op. 52 n.177. Those findings show that Verisk did not know or have reason to suspect that the email would delay the merger, meaning Verisk’s decision to send it was not “willful.”

2.0 Sending the August 5 email was not “the primary cause” of the parties’ failure to close the merger by the contractually specified Termination Date and the Court of Chancery’s contrary holding rests on legal error.

2.1 Ordinary English—as reflected in ordinary dictionaries—and caselaw confirm that the “primary” cause of an event is the most important cause. The Merger Agreement’s language referring to “*the* primary cause” also supports that reading, and confirms that the parties contemplated that only the single most important cause of an event could count to block termination under Section 9.1.

2.2 The court’s factual findings and the evidentiary record show that the August 5 email was not the most important reason the merger failed to close on time:

- Undisputed evidence shows that the FTC’s decision to continue its investigation rested primarily on a novel theory of anticompetitive harm;
- The record and FTC senior leadership confirmed that the FTC’s novel theory of harm was spurred by the parties’ Hart-Scott-Rodino Act (HSR) filings and complaints from multiple customers and competitors of AccuLynx and Verisk;
- AccuLynx’s own witnesses did not think that the email was the most important reason for the delay; they testified that the FTC would not have escalated its investigation based on complaints from a single competitor like ServiceTitan; and

- The parties were unanimous in testifying that the FTC would not have agreed to the “quick look” agreement on November 4, after Verisk disclosed the August 5 email and with full knowledge of its contents, had the FTC not believed it could potentially clear the merger before the Termination Date.

See infra 34-37.

2.3 The Court of Chancery incorrectly imbued “primary cause” with “but for” proximate cause principles, repeatedly identifying the August 5 email as the “but for” cause of the FTC’s decision.

Even if proximate cause principles were appropriate, the court misapplied them. This Court’s cases make clear a but-for chain of causation can be interrupted by an unforeseen “intervening” and “superseding” cause. That is exactly what happened here. The FTC’s novel theory of anticompetitive harm, grounded in and fueled by post-August 5 events, and the FTC’s subsequent issuance of the Second Request and demand for full compliance, individually and together, operated as superseding causes of the failure of the merger to close by the Termination Date. None was foreseeable when the Merger Agreement was signed or the August 5 email was sent.

3.0 Before the Court of Chancery, AccuLynx also argued that Verisk could not terminate the Merger Agreement because it failed to use commercially reasonable efforts to close the deal by not disclosing or explaining its interactions with ServiceTitan earlier in the FTC’s investigation. Although the Court of Chancery

did not formally decide that issue, Op. 42, this Court need not remand. The court recognized that there was nothing more that Verisk could have reasonably done to resolve the FTC's investigation in its factual findings, but stopped short of formally rejecting AccuLynx's material breach claim simply because it accepted AccuLynx's willful conduct argument. This Court can and should recognize that the claim fails on its face, meaning Verisk was entitled to terminate the Merger Agreement.

The Court of Chancery's decision undermines the consistency and predictability that Delaware strives for. It should be reversed.

STATEMENT OF FACTS

1. Verisk is the leading strategic data analytics and technology partner to the global insurance industry. One of Verisk’s software products, Xactimate, “is used by insurance adjusters and contractors to estimate property damage after events like fires or storms.” Op. 4. AccuLynx “operates a cloud-based roofing business management platform that assists roofing contractors in making sales and overseeing customer relationship management.” Op. 5. On July 29, 2025, Verisk and AccuLynx entered into an agreement for Verisk to acquire AccuLynx through a subsidiary for \$2.35 billion. Op. 8.

When the parties agreed to the merger, neither side expected significant regulatory scrutiny. Op. 11-12. The Merger Agreement provided four to five months to close the transaction, setting an initial outside closing date of November 26, 2025, with an option for either party to extend that date one time to December 26, 2025. Op. 12. This term was expressly negotiated, with AccuLynx originally asking for an even shorter 90-day outside date. Op. 12 n.35. The agreed closing timeline was possible only if the FTC did not subject the deal to a lengthy investigation. Under the HSR, certain merging parties must submit initial filings to the FTC and Department of Justice, and then wait 30 days before closing their deal. Op. 13. If the FTC allows the waiting period to expire, the deal can close. 15 U.S.C. § 18a(b)(1)(B). If it chooses to take a closer look, however, the agency can issue

what is called a “Second Request”—essentially, a “formal, in-depth demand” for documents and more detailed information about the transaction. Op. 13-14. One of the Merger Agreement’s closing conditions required the HSR waiting period to have expired before the parties became obligated to close the deal. Op. 11.

2. Before the parties entered into the Merger Agreement, Verisk was engaged in discussions with ServiceTitan—an AccuLynx competitor—to design a bespoke solution to integrate ServiceTitan’s software with Verisk’s products to streamline the claims estimation process. Op. 5. But Verisk and ServiceTitan were far apart on pricing and never got close to a deal. Op. 6. Verisk thus decided to end discussions with ServiceTitan shortly before the Merger Agreement was signed. On August 5, 2025, a few days after the Merger Agreement was signed, a Verisk executive sent ServiceTitan an email telling ServiceTitan that Verisk was ending discussions about a customized integration solution for ServiceTitan. Op. 9. Ultimately, on September 17, 2025, Verisk and ServiceTitan agreed to a standard integration into Verisk’s software platform. *Id.*

3. Subsequent events dashed the parties’ hopes for a quick closing. On August 19, 2025, Verisk and AccuLynx submitted their initial merger filings to the FTC, triggering the 30-day waiting period. Op. 13. A week later, the FTC began a preliminary investigation into the merger and reached out to one Verisk competitor and four AccuLynx competitors, including ServiceTitan. Op. 14. ServiceTitan’s

general counsel told the FTC that Verisk had broken off negotiations for a bespoke integration after the merger was announced and conveyed the content of the August 5 email. Op. 14, 18. Based on its conversations with ServiceTitan and other competitors, plus its review of the parties’ merger submissions, the FTC theorized that the merger might harm competition because Verisk might develop custom software integration solutions for AccuLynx that would not be available to its competitors. Op. 19.

The parties agreed that the FTC’s “market reset” theory of antitrust harm was novel, unsupported by evidence, and “likely would not have provided a basis to stop the deal.” Op. 53-54. So in September and October 2025, they worked together to address the FTC’s theories by providing documents and substantive information both in writing and through a series of calls and meetings with FTC staff. Op. 18-22. That included pulling and refiling their merger submissions to give the FTC additional time—up to October 22, 2025—to complete its initial review. Op. 19.

Unfortunately, that process was rockier than expected. During an October 14, 2025 meeting, the FTC asked if Verisk had terminated any bespoke integration solutions for AccuLynx competitors. Initially, Verisk did not identify the discussions with ServiceTitan as responsive to the FTC’s requests because, the Court of Chancery found, the relevant Verisk employees thought the integration deal with ServiceTitan was a success—recall the standard integration agreement the parties

inked on September 17, 2025—and did not remember the August 5 email or appreciate that the episode was responsive to the FTC’s requests. Op. 22-24. Verisk’s attempts to identify discussions responsive to the FTC’s requests did not identify the bespoke integration discussions with ServiceTitan, and Verisk’s letter of October 16 did not inform the FTC of the ServiceTitan discussions. Op. 24-27. The FTC issued a Second Request six days later. Op. 27-29.

Ultimately, Verisk’s outside counsel did identify the discussions and raised them with the FTC on November 4, 2025. With Verisk’s admission in hand and full knowledge of the August 5 email, the FTC entered into a “quick look” agreement that held out the possibility that the FTC might approve the deal after reviewing a narrower set of priority documents. Op. 29-30.

However, on December 1, 2025, the FTC informed “the parties that it expected to require full compliance with the Second Request.” Op. 32. The parties made a last-ditch effort to change the FTC’s mind, providing a 25-page, single-spaced white paper and meeting with the agency’s senior leadership. Op. 32-33.

The Court of Chancery recognized the enormous efforts Verisk put forth: “In total, Verisk met with the FTC nearly 30 times during the Merger review process and spent \$6 million on outside counsel, plus nearly \$2 million in document vendor fees for nearly 350 document reviewers to respond under the quick look agreement.”

Op. 33. AccuLynx’s counsel at trial characterized Verisk’s efforts as “herculean.” A681.

4. Despite the parties’ efforts, on December 24, 2025, the FTC informed the parties that it would require full compliance with the Second Request. Op. 33. At trial, AccuLynx’s antitrust counsel testified that a Second Request “can take six months or longer” to complete. A768. Based on her more than 31 years of experience working for the FTC and the 100 to 150 Second Requests that she worked on, Verisk’s FTC expert, Holly Vedova, testified that a Second Request takes “anywhere from 10 to 14 months” on average. A716-A717, A719.

Verisk’s CEO testified at trial that Verisk might have pursued a short extension of the Termination Date if the FTC clearance seemed close, but Verisk expected full compliance with the Second Request to consume “at least a six- to nine-month time period,” potentially much longer, and there was no guarantee the FTC would clear the merger after that time. A705-A707. The go-forward uncertainty, costs and risk outweighed “the original merits of the transaction.” A706.

On December 26, Verisk executed its right to terminate the Merger Agreement. Op. 33. AccuLynx disputed the validity of the termination. So Verisk brought suit in the Court of Chancery seeking a declaration that its termination was valid and effective. Op. 34.

5. After discovery, the Court of Chancery conducted a four-day expedited trial. Op. 35. Section 9.1 of the Merger Agreement provides that no party may terminate if (a) it is “in material breach” or (b) its “willful conduct[] has been the primary cause of ... the failure to satisfy any condition[s] to [its] obligations.” Op. 13. AccuLynx argued that Verisk could not terminate the Merger Agreement because (1) it breached its obligation to use commercially reasonable efforts to close the transaction by failing to address the FTC’s theories and avoid a Second Request; and (2) the August 5 email constituted “willful conduct” that caused the Second Request, and thus prevented the HSR waiting period from expiring before the Termination Date. Op. 40. Verisk, in contrast, argued that it had made commercially reasonable efforts to close the deal by cooperating with AccuLynx to do everything it could to clear the FTC’s investigation. Op. 37-39. And it argued that the August 5 email was not “willful conduct” that was “the primary cause” of the closing delay because Verisk had no idea that the FTC would later link the email to its novel antitrust theories and the email was not the main cause of the FTC’s decision to issue the Second Request. Op. 45.

The Court of Chancery sided with AccuLynx despite finding for Verisk on most of the contested factual issues. The court found that Verisk had worked in good faith to address the FTC’s theories and AccuLynx’s arguments boiled down to the “questionable premise” that Verisk “just need[ed] to ‘do better,’” and AccuLynx had

failed to identify anything more Verisk could have done to close the deal on time. Op. 41-42. And it acknowledged that Verisk had no reason to know or suspect that the August 5 email would support the FTC’s novel antitrust theories. Op. 52 n.177.

But the court ruled that Verisk had no right to terminate the Merger Agreement under Section 9.1’s “willful conduct” exception based on two key legal rulings. First, the court interpreted the term “willful conduct” only to require conduct that was voluntary, regardless of whether the actor had a culpable state of mind. Op. 47. Second, the court interpreted the term “the primary cause” to incorporate the tort-law concept of proximate causation, or “but-for cause[].” Op. 49-50. Based on those rulings, the court held that the August 5 email was “willful conduct” that was “the primary cause” of the closing delay because “but for” Verisk sending the August 5 email, the FTC would not have required full compliance with the Second Request on December 24. Op. 49-50.

After determining that Verisk’s termination was invalid, the court ordered specific performance—requiring Verisk to continue making commercially reasonable efforts to obtain the FTC’s approval to close the deal, regardless of how long it took. Op. 62. In doing so, the court granted AccuLynx (and imposed on Verisk) an indefinite extension of the Termination Date: a term directly contrary to the intent of the parties’ original Termination Date.

ARGUMENT

I. VERISK’S AUGUST 5, 2025, EMAIL TO SERVICETITAN WAS NOT “WILLFUL CONDUCT.”

A. Question Presented

Whether Verisk’s August 5, 2025, email to ServiceTitan constituted “willful conduct” under Section 9.1 of the Merger Agreement. This issue was preserved at A937-A940.

B. Scope Of Review

The Court reviews *de novo* the Court of Chancery’s interpretation of the term “willful conduct” in the Merger Agreement. *See Boardwalk Pipeline P’rs, LP v. Bandera Master Fund LP*, 288 A.3d 1083, 1111-12 (Del. 2022). The Court also reviews *de novo* the Court of Chancery’s application of the legal standard created by the Merger Agreement “to its factual and credibility determinations.” *DCV Hldgs., Inc. v. ConAgra, Inc.*, 889 A.2d 954, 960 (Del. 2005).

C. Merits Of Argument

The August 5 email was not “willful conduct” that could negate Verisk’s termination right. “Willful” is a term of art with a history in the law. The Court of Chancery’s definition, which equates willful with volitional, defies legal dictionaries, caselaw from this Court and the U.S. Supreme Court, pattern jury instructions, Delaware statutes, and the context and structure of the Merger Agreement itself. The court’s interpretation rendered the word meaningless in the

Merger Agreement. Under the correct standard, the court’s findings make clear that the August 5 email was not willful because Verisk had no reason to suspect that it would trigger antitrust scrutiny and delay the merger at the time it was sent. Op. 51, 52 n.177.

1. The Merger Agreement’s “willful conduct” exception to the parties’ termination rights applies only when a party acts in a way that it knew or should have known would obstruct the merger.

This Court follows the “objective theory” of contracts—that “a contract’s construction should be that which would be understood by an objective, reasonable third party.” *Weinberg v. Waystar, Inc.*, 294 A.3d 1039, 1044 (Del. 2023) (citation omitted). When a contract uses “established legal terminology ... a court will presume that the parties intended to use the established legal meaning of the terms.” *Penton Bus. Media Hldgs., LLC v. Informa PLC*, 252 A.3d 445, 461 & n.93 (Del. Ch. 2018) (collecting authorities). Courts thus consult legal dictionaries and other background legal sources to interpret undefined legal terms. *See Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 738 (Del. 2006); *Crispo v. Musk*, 304 A.3d 567, 582 n.90 (Del. Ch. 2023). Courts also consider the “contract as a whole” when selecting the best meaning of its provisions. *Weinberg*, 294 A.3d at 1044. Here, legal dictionaries, caselaw, statutes and related sources, and the Merger Agreement’s text and structure, all confirm that the “willful conduct” exception applies only when a party knows or should know that its acts would obstruct the merger.

- a. Start with legal dictionaries.
 - *Black’s Law Dictionary* defines “willful” conduct as acts that are “[d]one wittingly or on purpose, as opposed to accidentally or casually” and are “blameworth[y].” *Willful*, *Black’s Law Dictionary* (12th ed. 2024). It emphasizes that a “voluntary act becomes willful, in law, only when it involves conscious wrong or evil purpose on the part of the actor, or at least inexcusable carelessness, whether the act is right or wrong.” *Id.* It further explains that the “term *willful* is stronger than *voluntary* or *intentional*.” *Id.*
 - *Merriam-Webster* defines “willful” as “not accidental: done deliberately or knowingly and often in conscious violation or disregard of the law, duty, or the rights of others.” *Willful*, *Merriam-Webster’s Dictionary of Law*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/willful#legalDictionary>.
 - *Bouvier* defines “willfulness” as the “intention to cause some result through a given action,” and explains that “[w]illfulness is the application of a person’s will to achieve some result, that is to intend some action to achieve some intended purpose, when both the intention and the action are voluntary and committed by a person with legal capacity, and the action is not the result of coercion or deception.” *Willfulness*, *Wolters Kluwer Bouvier Law Dictionary Desk Edition* (2012).
 - And *Nolo* defines “willful” as “[i]ntentional, conscious, and intended to achieve a particular result.” *Willful*, *Nolo’s Plain-English Law Dictionary*, <https://dictionary.nolo.com/willful-term.html>.

Put simply, legal dictionaries define “willful” conduct as acts that a person knows or should know will cause a particular, usually wrongful, result.

- b. Caselaw and statutory sources support the same interpretation.
 - i. Delaware law recognizes that the term “willful” requires knowing or reckless conduct in the civil context. In *Jardel*, this Court explained that in the tort

context, “willful conduct” requires “an awareness, either actual or constructive, of one’s conduct and a realization of its probable consequences.” 523 A.2d at 530. While the statute in *Jardel* used the terms “wilful” or “wanton,” the Court separated them and held that “[e]ach requires that the defendant foresee that his unacceptable conduct threatens particular harm to the plaintiff.” *Id.* at 529-30 (emphasis added). And consistent with Delaware caselaw, Delaware’s Pattern Jury Instructions for Civil Practice explain that “[w]illfulness indicates an intent, or a conscious decision, to disregard the rights of others.” Del. P.J.I. Civ. § 5.10 (2025).

The Delaware Legislature has also repeatedly adopted this understanding of the term “willful.” For example, the Delaware Telemarketing Fraud Act provides that a telemarketing call “is ‘willful’ if the person making or initiating the call or contact knows or should know of the customer’s instruction to not call or contact.” 6 *Del. C.* § 2507A(a)(3). The comments to Delaware’s Uniform Commercial Code recognize that “wilful wrong” is distinct from “negligence.” *See* 6 *Del. C.* § 2-613 cmt. 1. And at least a dozen separate civil penalty statutes explain that a “wilful violation” of law “occurs when the party committing the violation knew” “that the party’s conduct was of the nature prohibited by” the law. *See* 6 *Del. C.* §§ 2409C(c), 2427B(c), 2505F(d), 2506B(c), 2510(e), 2510E(c), 2513D(c), 2522(b), 2533(e), 2590(c), 3683(a).

ii. In addition, the U.S. Supreme Court has explained that “[t]he word ‘willful’ is widely used in the law,” *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988), and its “construction is often dependent on the context in which it appears,” *Safeco*, 551 U.S. at 57 (citation omitted). “[W]hen used in the criminal context, a ‘willful’ act is one undertaken with a ‘bad purpose.’” *Bryan v. United States*, 524 U.S. 184, 191 (1998) (citation omitted). And when used in the civil context, “it is generally understood to refer to conduct” where the actor was “not merely negligent,” but rather “knew or showed reckless disregard” for particular consequences. *McLaughlin*, 486 U.S. at 133.

In *Safeco*, for example, the court held that a provision awarding damages against a defendant that “willfully fails to comply” with the Fair Credit Reporting Act applies to “knowing” or “reckless” violations. 551 U.S. at 57 (collecting authorities). In *McLaughlin*, the court held that a longer statute of limitations for “willful” violations of the Fair Labor Standards Act applies when “the employer either knew or showed reckless disregard for the matter of whether its conduct was prohibited by the statute.” 486 U.S. at 133. The court rejected, as inconsistent with the “plain” meaning of the word “willful,” a rule that would have allowed the longer statute of limitations to apply “based on nothing more than negligence, or, perhaps, on a completely good-faith but incorrect assumption that a pay plan complied with the FLSA.” *Id.* at 135. And in *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 617 (1993),

and *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 126 (1985), the court held that a provision providing for double damages for “willful” violations of the Age Discrimination in Employment Act applies when an employer knows that its conduct violates the statute or recklessly disregards that risk.

c. Finally, the Merger Agreement itself embraces this same understanding of willfulness. Although the contract does not define the term “willful conduct,” it does define “willful breach.” And, consistent with the legal dictionaries, caselaw, pattern jury instructions, and statutes cited above, the Merger Agreement defines “willful breach” as “an intentional and willful material breach, or failure to perform any covenant or obligation, of this Agreement that is a consequence of an act or omission *knowingly undertaken or omitted by the breaching party hereto with the intent of causing a breach.*” Op. 12 n.37 (emphasis added).

* * *

In short, “willful conduct” is intentional conduct that a party undertakes while knowingly or recklessly disregarding the risk that a particular consequence will result. The Merger Agreement specifies that the relevant consequence is a “failure to satisfy any condition to the obligations of the Parties.” Op. 13.

2. The August 5, 2025, email to ServiceTitan was not “willful conduct” because Verisk did not knowingly or recklessly disregard a risk that it would prevent the merger from closing before the contract’s Termination Date.

The Court of Chancery’s factual findings show that the August 5 email was not “willful conduct” that negated Verisk’s termination right. The court found that when Verisk signed the Merger Agreement, “Verisk believed ... that the Merger presented minimal antitrust risk” because “Verisk and AccuLynx did not compete horizontally, they did not have a vertical supplier-customer relationship, and Verisk had integration agreements with only a small number of AccuLynx competitors.” Op. 51. The court found that the “parties agreed to a four-to five-month outside closing date on the belief that the Merger presented little regulatory risk.” *Id.* The parties agreed that the “market reset” theory that undergirded the FTC’s inquiry “was unusual, unsupported by any real-world examples or empirical evidence, and likely would not have provided a basis to stop the deal.” Op. 53-54. And the court acknowledged that Verisk “did not know the August 5 Termination Email would attract FTC scrutiny” and “did not expect its decision would raise competition concerns.” Op. 52 n.177.

Put simply, the record makes clear that there is no dispute that Verisk did not have reason to believe that sending the August 5 email would support the FTC’s novel antitrust theories, much less that those theories would delay the merger past the Termination Date. Indeed, AccuLynx has never argued that Verisk knew or

should have known that sending the email would delay the merger. Accordingly, sending the email was not “willful conduct” that could negate Verisk’s right to terminate the Merger Agreement.

3. The Court of Chancery applied the wrong legal standard in determining whether Verisk’s conduct was willful.

The Court of Chancery did not dispute that Verisk had no reason to suspect that the August 5 email would delay closing the merger. But it nevertheless found that sending the email was willful. The Court of Chancery’s decision to equate “willful” with volitional is wrong. It cannot be squared with the term’s ordinary meaning or the Merger Agreement, and the court’s justifications for its interpretation are unpersuasive.

(a) The Court of Chancery’s interpretation of “willful” contradicts the term’s ordinary meaning as used in the Merger Agreement.

To start, the Court of Chancery’s interpretation of “willful conduct” contradicts the ordinary legal meaning of that term as used in the Merger Agreement. *See supra* pp. 20-21. By contrast, the Court of Chancery’s interpretation of “willful” as voluntary or volitional does not even require negligence to trigger the willful conduct exception—just conduct that is not unconscious, coerced, or otherwise involuntary. That interpretation reads the word “willful” right out of the contract.

Under the Court of Chancery’s view, the only work the word “willful” does in the “willful conduct” exception is to ensure that involuntary conduct does not

trigger the exception. But virtually everything a corporation does or does not do is volitional. A corporation is not like a natural person. It cannot sleepwalk or hit someone involuntarily. And while it is theoretically possible that corporate personnel could be coerced (say, by threats of violence) into involuntary conduct, the parties were planning for an ordinary merger. In context, it is simply implausible that the parties intended to disregard the ordinary legal meaning of willful and chose to draft a superfluous term that encompasses every corporate action.

(b) The Court of Chancery’s justifications for its interpretation lack merit.

The Court of Chancery offered two justifications for its interpretation. Neither has merit.

First, citing a law review article on trademark infringement remedies, the court asserted that “in the civil context, willfulness draws the line between ‘intentional, or knowing, or voluntary’ conduct from ‘accidental’ conduct.” Op. 44-45 (emphasis omitted; quoting Blake R. Bertagna, *Poaching Profits: An Examination of the Ability of a Trademark Owner to Recover an Infringer’s Profits Under the Lanham Act as Amended in 1999*, 16 Tex. Intell. Prop. L.J. 257, 268-69 (2008)). The article does not support the court’s conclusion. To start, when citing to the article, the court overlooked the next page, which states that “in the civil context, the [Supreme] Court [has] construed willful conduct as requiring a ‘bad purpose’ as well.” *Poaching Profits*, 16 Tex. Intell. Prop. L.J. at 270. Moreover, the passage that

the court quoted discusses the Supreme Court’s decision in *Bryan*, 524 U.S. at 191 n.12, which does not purport to explain what “willful” means in the civil context. But Supreme Court cases that *do* address the question hold that in the context of “civil liability,” willful conduct refers to “knowing” or “reckless” acts. *Safeco*, 551 U.S. at 57. This Court, Delaware authorities, and the Merger Agreement have all adopted the same understanding. *Supra* pp. 22-24. So the court’s starting premise that in “civil” contexts, “‘willful’ is more often used to mean ‘intentional, or knowing, or voluntary,’” is simply wrong. Op. 44.

Second, the court reasoned that “willful conduct” must not require any particular state of mind because (a) the Merger Agreement defines “willful breach” as acts “knowingly undertaken or omitted by the breaching party hereto with the intent of causing a breach,” Op. 12 n.37; (b) the exceptions at the end of Section 9.1 use the term “willful conduct” rather than “willful breach,” Op. 13; and so (c) the parties must have “intended [‘willful conduct’] to mean something other than ‘willful breach.’” Op. 45-46. But that reasoning contravenes the Merger Agreement’s structure.

Section 9.1 disallows termination “(a) if [the terminating] party is then in material breach ... *or* (b) if such party’s failure to fulfill its obligations or to comply with its covenants ... or other willful conduct” has caused or resulted in “the failure to satisfy any condition to the [parties’] obligations.” Op. 13 (emphasis added). The

term “willful breach” is defined to require a “material breach.” Op. 12 n.37. The parties thus did not use the term “willful breach” in clause (b) because clause (a) already disallows termination for any “material breach,” which by definition would include all willful breaches. Rather, the parties used the term “willful conduct” in clause (b) to cover other immaterial breaches and non-breaching conduct that would nevertheless foreseeably obstruct the contract.

For similar reasons, the Court of Chancery’s reliance on *XRI Investment Holdings LLC v. Holifield*, 2024 WL 3517630, at *20-23 (Del. Ch. July 24, 2024), was misplaced. *XRI* held that a contract that foreclosed indemnification for “gross negligence or willful breach” must have been targeting something more than mere “voluntary action” because gross negligence requires recklessness, and thus “willful breach” must require a similarly heightened mental state. *Id.* Because the Merger Agreement here does not pair “willful conduct” with a term like “gross negligence,” the Court of Chancery thought the parties must be equating “willful” with “voluntary and intentional.” Op. 47. But “willful” ordinarily requires knowing or reckless conduct and the Merger Agreement used the term in that sense elsewhere. *See supra* p. 24. So the parties did not need to juxtapose “willful conduct” with something like “gross negligence” to make its meaning clear.

In sum, the Court of Chancery misinterpreted the Merger Agreement by equating “willful conduct” with “volitional conduct.” Under the correct definition, there is no dispute that the August 5 email was not “willful conduct.”

II. VERISK’S AUGUST 5, 2025, EMAIL TO SERVICETITAN WAS NOT “THE PRIMARY CAUSE” OF THE DELAY IN CLOSING THE MERGER.

A. Question Presented

Whether the August 5 email was the “primary cause” of the FTC’s Second Request, which ensured that the HSR waiting period would not expire before the December 26, 2025, Termination Date. This question was preserved at A607-A612, A940-A948.

B. Scope Of Review

The Court reviews *de novo* the Court of Chancery’s interpretation of the term “the primary cause” in the Merger Agreement. *See Boardwalk*, 288 A.3d at 1111-12. The Court also reviews *de novo* the Court of Chancery’s application of the legal standard created by the Merger Agreement “to its factual and credibility determinations.” *DCV Hldgs.*, 889 A.2d at 960. The Court also reviews *de novo* whether an intervening and superseding cause delayed the merger’s closing because there are no disputed facts as to that question, and it can thus be decided as a matter of law. *See Sims v. Stanley*, 945 A.2d 1168, 2008 WL 853538, at *2 (Del. Apr. 1, 2008) (TABLE).

C. Merits Of Argument

The August 5 email was not “the primary cause” of the FTC’s Second Request or the ultimate inability to close the merger by the Termination Date. The word “primary” means most important. And testimony from both sides established that

the August 5 email was not the most important cause of the closing delay. Rather, the most important cause was the FTC’s issuing and requiring full compliance with the Second Request. That action was based on the FTC’s developing a novel theory of competitive harm after speaking to multiple AccuLynx competitors.

The court committed legal error when interpreting “the primary cause” to incorporate elements of the tort-law concept of proximate, or “but-for” cause, contemplating multiple contributing causes. Op. 49-50. That was wrong. The word “primary” is not a legal term of art, and there is no reasonable way to read “the primary” to refer to more than one. And even if the court were going to look to tort law, it should have incorporated all relevant tort principles and recognized that the FTC’s decision to issue and require full compliance with the Second Request—which was unforeseeable when Verisk sent the email—superseded any effect the email might have had on the satisfaction of the HSR closing condition.

- 1. Under the Merger Agreement, an act is “the primary cause” of “the failure to satisfy [a] condition to the obligations of the parties” only when it is the most important cause.**

The Merger Agreement does not define the term “the primary cause.” Because the term is ordinary English rather than a legal term of art, the Court thus applies the term’s ordinary meaning using sources like common reference dictionaries. Those sources confirm that “the primary cause” is the most important cause of a particular result—the only way an ordinary English speaker can understand the phrase.

- a. Begin with dictionary definitions.
 - *Merriam-Webster* defines “primary” as “of first rank, importance, or value.” *Primary, Merriam-Webster Online*, <https://www.merriam-webster.com/dictionary/primary>.
 - The *American Heritage Dictionary* defines “primary” as “[f]irst or highest in rank or importance; principal.” *Primary, American Heritage Dictionary* (5th ed. 2022), <https://www.ahdictionary.com/word/search.html?q=primary>.
 - And the *Oxford English Dictionary* defines “primary” as “of the first rank or importance, chief, principal.” *Primary, Oxford English Dictionary* (2026).

b. Courts have understood “the primary cause” the same way. For example, the Prison Litigation Reform Act of 1995 allows federal courts to order inmates released from prison based on overcrowding if “[over]crowding is the primary cause of the violation of a Federal right.” 18 U.S.C. § 3626(a)(3)(E)(i). Courts interpreting that provision have concluded that the primary cause is “the cause that is ‘first or highest in rank or importance; chief; principal.’” *Coleman v. Schwarzenegger*, 922 F. Supp. 2d 882, 920 (E.D. Cal. 2009) (three-judge panel opinion), *aff’d sub nom. Brown v. Plata*, 563 U.S. 493 (2011). Reflecting a similar understanding, in *Rocco v. Lehigh Valley Railroad Co.*, 288 U.S. 275, 278-80 (1933), the Supreme Court held that an employee’s failures could not be considered the “primary cause” of a resulting death because the acts of another could have been a cause “in whole or in part.” And in *R.W. Beck & Associates v. City & Borough of Sitka*, 951 F.2d 362, 1991 WL 268718, at *3 (9th Cir. Dec. 16, 1991) (TABLE), the

Ninth Circuit held that a party's actions could not have been "the primary cause" of an accident within the meaning of an insurance policy exclusion because the jury found the party only 40% responsible for the accident.

c. The Merger Agreement supports the same reading. The willful conduct exception refers to "*the* primary cause." Op. 13 (emphasis added). "The definite article 'the' is generally used 'as a function word to indicate that a following noun or noun equivalent is definite or has been previously specified by context or by circumstance.'" *ION Geophysical Corp. v. Fletcher Int'l, Ltd.*, 2010 WL 4378400, at *7 (Del. Ch. Nov. 5, 2010). In context, the Merger Agreement thus contemplates that there will be a single "primary cause." See *Darling Ingredients Inc. v. Smith*, 2023 WL 8533204, at *9 (Del. Ch. Dec. 11, 2023). That, in turn, supports reading "primary cause" as referencing one most important cause, rather than one important cause among many.

Thus, the Merger Agreement disallows termination when a party's willful conduct has been the most important reason for "the failure to satisfy [a] condition to the obligations of the Parties." Op. 13.

2. The August 5, 2025, email to ServiceTitan was not "the primary cause" of the failure to close the merger before the Termination Date.

The undisputed record demonstrates that the August 5 email was not the most important reason that the HSR waiting period had not expired by the Termination

Date, giving rise to Verisk’s option to terminate. The HSR waiting period had not expired because the FTC issued and required full compliance with its Second Request, and the record makes clear that the August 5 email was not even the most important cause of the Second Request.

To start, the record evidence and AccuLynx’s own arguments at trial conclusively establish that the FTC’s decision to issue the Second Request was driven by its novel market reset theory based on post-August 5 events:

- The FTC’s initial intake of the parties’ August 19 HSR filings commented on, among other things, the merger’s potential to create a “self-reinforcing flywheel,” a “competitive moat,” and AccuLynx’s ability to impose meaningful price increases on its customers. A721-A722.
- In early September, numerous AccuLynx and Verisk competitors, including Cotality, Roofr, and ServiceTitan, raised concerns to the FTC that a Verisk integration was “critical” for AccuLynx’s customers, that the post-merger entity could harm competition by foreclosing access to such integrations, and that such circumstances could create pricing pressure on contractors. A395-A397, A538-A543, A722, A741.
- FTC Chairman Andrew Ferguson later told AccuLynx’s lobbyist that the FTC “believe[d] there are significant concerns to explore here: [] both customers and competitors [were] telling the FTC that ... Verisk will use Xactimate to foreclose competition from AccuLynx’s competitors.” A359-A360.
- AccuLynx’s ordinary course documents and data further confirmed that its customers were “sticky” (*i.e.*, not switching away from AccuLynx despite high prices) and that there was AccuLynx customer demand for a “more robust” integration with Verisk’s platform, contradicting AccuLynx’s representations to the FTC. A723-A724.

- AccuLynx’s expert, John Newman, testified that:
 - “[T]he FTC’s minds” were not “made up and all the damage had [not] been done” as of September 5, 2025—a month after the email had been sent—and the FTC would have decided to send the Second Request based on later developments, A806-A807;
 - Even after the August 5, 2025, email, the FTC would not have issued the Second Request if Verisk had explained its rationale for sending the termination email to ServiceTitan sufficiently far in advance of October 22, 2025, A813;
 - “[W]hen the FTC proceeds to a full second request investigation, typically, they would have heard from multiple rivals that they were worried about [competitive] foreclosure” and the FTC would not have issued the Second Request just based on complaints from “one rival”—ServiceTitan, A831-A832; and
 - The FTC’s November 4 assent to a “quick-look agreement”—an agreement to review certain priority documents to see if the investigation could be closed without requiring full compliance with the Second Request—the same day that Verisk notified the FTC about the August 5 email suggests that the FTC still believed, even after receiving the email, that its investigation could be completed before an on-time merger closing, A813.
- AccuLynx’s regulatory counsel, Olivier Antoine, told the same story, testifying that:
 - “the FTC would have approved the merger” before the Termination Date if Verisk’s discussions with the FTC had gone more smoothly, with or without the August 5 email, A778-A779; and
 - the FTC “was hearing from not one, but several sources in the marketplace about the FTC’s concerns,” A783.
- Verisk’s expert, Holly Vedova, was likewise in agreement, testifying that:

- “FTC told the parties that they were doing numerous calls with third parties, that the calls were not helping the parties, that the evidence they were getting in these calls was supporting the FTC’s theory,” A731;
- These calls were coming from Verisk competitors, not just AccuLynx competitors, and the third parties were raising other terminated integration discussions and data privacy concerns, A722;
- “the FTC was hearing that Verisk was a monopolist, AccuLynx was a near-monopolist, that AccuLynx’s rivals were fearful that Verisk was going to foreclose their access to this deeper, more robust integration,” A731-A732; and
- while the FTC’s novel “legal theory” made the August 5 email a key component of the investigation, the FTC would not have agreed to the quick-look agreement on November 4 if it did not believe it might have concluded its investigation by the Termination Date notwithstanding everything it knew, A725, A732;

Under the correct legal standard, there is no serious dispute that the August 5 email was not “the primary cause” of the FTC’s decision to issue and require full compliance with the Second Request.

3. The Court of Chancery applied the wrong legal standard in determining that the August 5, 2025, email was the primary cause of the FTC-related closing delays.

The Court of Chancery interpreted the term “the primary cause” to incorporate the tort-law concept of “proximate cause.” Op. 49-50. It therefore concluded that “the primary cause” is synonymous with “a ‘but for’ causation paradigm,” the Delaware standard for proximate cause in negligence cases. *Id.* And applying that standard, the court repeatedly invoked the “but for” causation standard in concluding

that the August 5 email was “the primary cause” of the FTC’s decision to issue and require full compliance with the Second Request. Op. 50-56.

The court should not have junked the ordinary meaning of “primary” to incorporate a hybrid tort-law causation standard. And the court’s decision was wrong even under tort-law causation principles.

(a) The Court of Chancery should have applied the ordinary meaning of “primary cause” rather than importing tort law principles.

The court’s decision to look to tort law to define the meaning of “the primary cause” was wrong. The court should have applied the ordinary meaning of the word “primary,” *see Northwestern National Insurance Co. v. Esmark, Inc.*, 672 A.2d 41, 44 (Del. 1996), rather than straining to invent a specialized legal meaning. Unlike the term “willful,” “primary” is not a legal term of art that necessarily incorporates a large body of decisional law. There was no reason to treat it like one. The court should have used the plain English definition of “the primary cause” and asked whether the August 5 email was the most important reason the HSR waiting period had not expired by the time of the Termination Date.

(b) The Court of Chancery misapplied the tort-law principles it chose to adopt.

The Court of Chancery’s decision was wrong even if the term “the primary cause” in Section 9.1 incorporated tort-law proximate causation principles. Under Delaware law, a but-for chain of causation can be interrupted by an “intervening”

and “superseding” cause—“a new and independent act, itself a proximate cause of an injury, which breaks the causal connection between the original tortious conduct and the injury.” *Duphily v. Del. Electric Cooperative, Inc.*, 662 A.2d 821, 829 (Del. 1995). To qualify, “the intervening act or event itself must have been neither anticipated nor reasonably foreseeable.” *Id.* When the intervening act is not reasonably foreseeable, it “supersedes and becomes the *sole* proximate cause of the plaintiff’s injuries, thus relieving the original tortfeasor of liability.” *Id.*

Here, the FTC’s decision to issue the Second Request was an intervening cause of the delay in closing the merger. Indeed, it was the pendency of the Second Request that prevented the HSR waiting period from expiring before the Termination Date. And the FTC’s decision to issue the Second Request was not a foreseeable consequence of sending the August 5 email to ServiceTitan. The Court of Chancery found that when the email was sent, the parties believed that the merger presented very little antitrust risk and could not have foreseen the FTC’s novel “market reset” theory. *See supra* pp. 25-26. And the undisputed record—including testimony from AccuLynx’s own witnesses—establishes that the August 5 email was not even sufficient to trigger the Second Request, and the FTC issued the Second Request only after hearing complaints from multiple AccuLynx competitors and developing its substantive novel antitrust theory. *See supra* pp. 34-37. So even if it was permissible for the court to treat “primary cause” as synonymous with

“proximate cause,” it erred in failing to recognize that the Second Request was an unforeseeable intervening and superseding cause that interrupted the chain of causation.

By the same token, even assuming the Court of Chancery thought it was identifying the main proximate cause, despite its recognition that there can be multiple contributing proximate causes, Op. 50, its conclusion that the August 5 email was “*the* primary cause” among them would only be clear error in light of the undisputed record evidence discussed above. *See In re Columbia Pipeline Grp., Inc. Merger Litig.*, 342 A.3d 324, 359 (Del. 2025).

III. VERISK USED COMMERCIALY REASONABLE EFFORTS TO CLOSE THE MERGER, AND THE COURT DOES NOT NEED TO REMAND FOR THE COURT OF CHANCERY TO CONSIDER THAT QUESTION.

A. Question Presented

Whether Verisk used commercially reasonable efforts to close the merger.

This issue was preserved at A596-A606, A924-A937.

B. Scope Of Review

The Court reviews *de novo* whether the facts the Court of Chancery found about Verisk’s conduct satisfy the legal standard for commercially reasonable efforts. *See DCV Hldgs.*, 889 A.2d at 960.

C. Merits Of Argument

AccuLynx argued before the Court of Chancery that Verisk could not terminate the Merger Agreement because it failed to use commercially reasonable efforts to close the merger by not promptly disclosing and explaining the August 5 email to the FTC. While the court did “not definitively decide whether Verisk breached its commercially reasonable efforts obligations,” it all but rejected this claim. Op. 42. If this Court finds that the August 5 email was not “willful conduct” or “the primary cause” of the delay in closing the merger, there is no need to remand because settled legal principles and the court’s findings preclude any conclusion that Verisk failed to use commercially reasonable efforts to resolve the FTC’s investigation.

As this Court has explained, a commercially reasonable efforts clause in a merger agreement requires a party to take “all reasonable steps to solve problems and consummate the transaction.” *Williams Cos. v. Energy Transfer Equity, L.P.*, 159 A.3d 264, 272 (Del. 2017). “When assessing whether a party has breached an efforts clause,” courts look to whether the party “(i) had reasonable grounds to take the action it did and (ii) sought to address problems with its counterparty.” *Menn v. ConMed Corp.*, 2022 WL 2387802, at *35 (Del. Ch. June 30, 2022).

Notably, a commercially reasonable efforts provision does not require perfect efforts or successful efforts. Indeed, the purpose of a commercially reasonable efforts provision is to “mitigate the rule of strict liability for contractual non-performance that otherwise governs.” *Akorn, Inc. v. Fresenius Kabi AG*, 2018 WL 4719347, at *86 (Del. Ch. Oct. 1, 2018), *aff’d*, 198 A.3d 724 (Del. 2018) (TABLE). Accordingly, courts will not second guess good-faith efforts to overcome obstacles and close a merger. For example, in *In re Anthem-Cigna Merger Litigation*, 2020 WL 5106556, at *5 (Del. Ch. Aug. 31, 2020), *aff’d sub nom. Cigna Corp. v. Anthem, Inc.*, 251 A.3d 1015 (Del. 2021) (TABLE), the court found that Anthem did *not* breach a clause requiring it to take any and all necessary actions to overcome regulatory scrutiny of a merger because Anthem undertook a good-faith strategy to obtain regulatory approval, even though “Cigna disagreed with Anthem’s strategy in real time, and with the benefit of hindsight, it [was] easy to criticize Anthem’s approach.”

Although the Court of Chancery stopped short of “definitively” ruling on AccuLynx’s commercially reasonable efforts argument, Op. 42, it made clear that the argument is doomed. “AccuLynx does not argue that Verisk ‘pursued another path designed to avoid’ closing,” or “that Verisk failed to ‘seek to address problems with its counterparty.’” Op. 41 (alteration adopted). Instead, “AccuLynx argues that Verisk breached its commercially reasonable efforts obligations by misrepresenting and omitting information about its enhanced integration discussions with ServiceTitan in response to the FTC’s questions.” Op. 41.

But that “theory is an awkward fit for the facts of this case.” Op. 40. The court found that Verisk’s efforts to obtain FTC approval for the merger included:

- collecting nearly 4 million documents from 16 custodians, and producing more than 400,000 documents in a span of eight weeks;
- submitting a 36-page, single-spaced response to the FTC’s first-phase specifications, and a 25-page, single-spaced white paper in December 2025 ahead of its final meeting with the FTC;
- meeting with the FTC nearly 30 times;
- building a specialized “Python script” to search a Verisk database for references to AccuLynx’s competitors;
- hiring experienced legal advisors, expert economists, and a government affairs firm; and
- spending approximately \$8 million on outside counsel and document vendor fees.

Op. 25, 31-33, 38-39.

In response to AccuLynx’s claim, the court found that “the Verisk employees who knew about the” discussions with ServiceTitan “did not remember those discussions or understand they were responsive to the FTC’s inquiries.” Op. 41. That finding guts AccuLynx’s claim that Verisk mismanaged its interactions with the FTC by not disclosing or explaining its interactions with ServiceTitan because no additional investigation would have “ensure[d]” that “forgetful or confused employees accurately responded to the FTC’s inquiries.” *Id.* Ultimately, “AccuLynx’s position largely rests on the questionable premise that sophisticated parties just need to ‘do better’ when they respond to regulatory authorities,” Op. 42—exactly the sort of second-guessing that cannot establish a breach of an efforts provision. *Anthem-Cigna*, 2020 WL 5106556, at *5.

Both parties regret that those efforts were not successful, but AccuLynx has never identified what Verisk could have done to achieve a better outcome. No Delaware case has ever found a breach of a commercially reasonable efforts obligation under remotely similar facts. There is thus no reason to remand for yet more litigation in this expedited proceeding. This Court should hold the parties to their bargain, and issue an order and judgment that Verisk validly terminated the Merger Agreement.

* * *

“Delaware courts are well-aware that ‘it is more than the statutory words on paper that give life to a system of entity law. Much often depends on the extent to which specific disputes are consistently handled by courts, thus giving business [persons] predictable guidance by which to order their relations.’” *Maffei v. Palkon*, 339 A.3d 705, 742 (Del. 2025) (citation omitted). The Court of Chancery’s decision undermines Delaware’s emphasis on consistency and predictability and would have serious adverse effects far beyond this specific case if upheld:

- The court’s interpretation of the word “willful” deviates from the common understanding of this legal term and broadens its meaning to encompass any corporate act.
- The court’s interpretation of “the primary cause” deviates from the plain language meaning of the term, improperly conflating it with legal “but for” causation principles.
- The court’s decision ignores the explicit terms of an agreement struck between sophisticated parties and orders relief that is irreconcilable with the terms that they chose: a Merger Agreement with no definite Termination Date that is entirely dependent on an FTC investigation with no definitive timeline.

The Court of Chancery’s decision is wrong. It should be reversed.

CONCLUSION

The Court should reverse the Court of Chancery's judgment.

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