



IN THE SUPREME COURT OF THE STATE OF DELAWARE

VERISK ANALYTICS, INC. and LENNY
MERGER SUB, INC.,

Plaintiffs/Counterclaim
Defendants Below, Appellants,

v.

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.

No. 369, 2026

Court Below: Court of Chancery
of the State of Delaware,

C.A. No. 2026-0023-BWD

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NATURE OF PROCEEDINGS

Verisk Analytics, Inc. (“Verisk”) and its indirect, wholly-owned subsidiary Lenny Merger Sub, Inc. executed a Merger Agreement (“the Agreement”) with ExactLogix, Inc. d/b/a AccuLynx.com (“AccuLynx”) and Richard Spanton, Jr. as the sellers’ representative (together, “Sellers”) that required Verisk to purchase AccuLynx for \$2.35 billion in cash.

Verisk agreed to use commercially reasonable efforts to do “all things necessary, proper or advisable” to consummate the transaction and obtain antitrust approval, and to comply with requests for information from the Federal Trade Commission (“FTC”) as quickly as practicable. The Agreement permitted either party to terminate if the transaction had not closed by December 26, 2025, but that right was not absolute. Under Section 9.1 of the Agreement, neither party could terminate if its “willful breach” prevented the satisfaction of a closing condition, if it was in “material breach,” or if its “willful conduct” or failure to comply with its contractual obligations was the primary cause of the failure to satisfy a closing condition.

When the FTC did not approve the merger by December 26, Verisk purported to terminate the Agreement. Verisk now blames the FTC’s “lengthy review process.” Appellants’ Opening Brief (“AOB”) at 1. But the evidence presented during the four-day trial shatters any illusion that Verisk was merely an unlucky victim of an

overzealous FTC inquiry. Verisk’s own antitrust expert, former FTC Director of the Bureau of Competition Holly Vedova, confirmed that Verisk’s willful conduct was the primary cause of the failure to obtain antitrust approval.

For months before the merger, unknown to AccuLynx, Verisk had been discussing with ServiceTitan, an AccuLynx competitor, a software integration more robust than what Verisk typically offers in the market. Just six days after signing the Agreement, Verisk informed ServiceTitan that it was terminating those discussions due to the AccuLynx acquisition. As Vedova testified, Verisk’s intentional decision to end the ServiceTitan bespoke integration discussions—and to link that termination to the pending merger in an email to ServiceTitan on August 5, 2025—was *the* reason the FTC did not conclude its investigation by the outside date.

Verisk does not deny deliberately ending the ServiceTitan integration discussions or sending the email that spawned the FTC’s investigation. Instead, it accuses the Court of Chancery of rewriting the Agreement. According to Verisk, the Agreement’s termination bar for “willful conduct” required Verisk to know or recklessly disregard that its conduct would prevent closing. Verisk misreads the Agreement.

The Court of Chancery correctly held that when the parties referred to “willful conduct,” they meant to include “any voluntary and intentional conduct that caused a condition to fail.” Ex. A to AOB, Post-Trial Opinion (“Op.”) at 47. That conclusion

is consistent with the ordinary meaning of the word “willful,” the civil context in which it appears, the term it modifies in Section 9.1 (“conduct” rather than a term denoting a specific, culpable result like “breach”), and the Agreement as a whole. Even under Verisk’s interpretation, its conduct was willful because it evinced reckless disregard for triggering FTC scrutiny. And, as demonstrated by Verisk’s expert’s testimony, the court did not clearly err in finding that the August 5 email was the primary cause of the failure to obtain antitrust approval within the allotted time.

Verisk’s termination was also invalid because Verisk breached its obligation to use commercially reasonable efforts to obtain FTC approval and close the deal. Verisk recklessly created the antitrust concern on which the FTC focused and then aggravated the problem by repeatedly failing to disclose the ServiceTitan integration discussions despite multiple FTC inquiries plainly targeting this issue.

This Court should affirm.

SUMMARY OF ARGUMENT

1.0 Denied. Verisk’s decision to terminate the ServiceTitan integration negotiations and send the August 5 email was “willful conduct” under the Agreement.

1.1 Denied. As used in Section 9.1, “willful conduct” means voluntary and intentional conduct. This definition comports with the ordinary definition of the word “willful” in the civil context. Moreover, because in the Agreement “willful” modifies the neutral word “conduct,” this case is nothing like Verisk’s cited authorities, where “willful” modifies a word that denotes a specific, culpable result like “violation,” “breach,” or “injury.” Verisk’s reading would also render the Agreement’s separate termination exceptions for “willful breach” and “willful conduct” superfluous.

1.2 Denied. Under a proper reading of the Agreement, the August 5 email was “willful conduct” because it was sent voluntarily and intentionally. A senior Verisk executive authorized terminating the ServiceTitan discussions after consulting with Verisk’s head of M&A, and a Verisk employee chose to cite the merger as the reason for that termination. Even under Verisk’s interpretation, this conduct was willful because it evinced reckless disregard for the risk of triggering FTC scrutiny.

2.0 Denied. Verisk’s willful conduct was the “primary cause” of the failure to close by the outside date.

2.1 Denied. The Court of Chancery’s analysis is proper and indistinguishable from the one Verisk now proposes. The court reasoned that to be “the primary cause” of the failure of a closing condition, Verisk’s willful conduct had to be both *a* cause (*i.e.*, a proximate cause) and “the *primary*” one. Op. 50.

2.2 Denied. The Court of Chancery did not clearly err in finding that the August 5 email was the primary cause of the delay. Verisk’s own expert acknowledged that the ServiceTitan email was “*the* reason why the FTC needed to investigate the transaction.” A729 (emphasis added). Overwhelming evidence confirmed that the email prompted the FTC’s decision to conduct a lengthy investigation that prevented the deal from closing in time.

2.3 Denied. The FTC’s decision to issue and require full compliance with a Second Request was not a “superseding cause” of the failure to obtain timely FTC approval, because the Second Request was itself a natural and reasonably foreseeable result of Verisk’s ill-advised email to ServiceTitan.

3.0 Denied. Verisk breached its obligation to use commercially reasonable efforts to close the FTC’s investigation and consummate the merger twice over. A reasonable person exercising sound judgment would not have (1) emailed a major AccuLynx competitor tying its decision to discontinue negotiations with that competitor to the merger while antitrust review was pending, and then (2) repeatedly failed to disclose that information in response to the FTC’s pointed inquiries.

STATEMENT OF THE FACTS

I. Factual Background

A. Verisk agrees to acquire AccuLynx.

AccuLynx delivers business management software for roofing contractors. Op. 5. Verisk offers a property estimating solutions system called “Xactware” as part of its insurance claims business. Op. 4. Verisk offers third parties the opportunity to “integrate” their software with Verisk’s Xactware products and access Verisk’s data in their applications through “standard” integrations. A682, A685.

On July 29, 2025, the parties executed the Agreement, under which Verisk agreed to pay \$2.35 billion cash for 100% of AccuLynx’s equity. A101. The Agreement requires Verisk to “use commercially reasonable efforts to take, or cause to be taken, all actions” necessary or advisable to consummate the Merger “as soon as reasonably practicable.” A142-43. Because the parties anticipated the Agreement would be subject to antitrust approval under the Hart-Scott-Rodino (“HSR”) Act, Verisk also agreed to “use commercially reasonable efforts to obtain an early termination of any applicable [HSR Act] waiting period,” to “comply at the earliest reasonably practicable date with any request under the HSR Act,” and to use “commercially reasonable efforts to promptly obtain any clearance required under the HSR Act and any other antitrust Laws.” A143-44.

The parties set an initial outside date (the “Outside Date”) of November 26, with an option for either party to extend once, to December 26. A625. Section 9.1 of

the Agreement lets either party terminate the Agreement after the Outside Date, subject to several exceptions. A157-59. A party “shall not be entitled to terminate ... if [its] knowing and willful breach of this Agreement has prevented the satisfaction of the conditions to the consummation of the Transactions.” A158. Termination is also unavailable to a party that “is then in material breach” of the Agreement. A159. And a party cannot terminate “if such party’s failure to fulfill its obligations or to comply with its covenants under this Agreement, or other willful conduct, has been the primary cause of, or primarily resulted in, the failure to satisfy any condition to the obligations of the parties.” A159.

Section 9.2 defines a “willful breach” as:

[A]n 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 of this Agreement.

A159. The Agreement does not define “willful conduct.” Although the Agreement uses the term “willful conduct” in Section 9.1, it uses a different term, “willful misconduct,” in several other provisions. A152, A177, A260-63, A279.

B. Verisk discontinues “bespoke” integration discussions with ServiceTitan, a major AccuLynx competitor, citing the merger.

In late 2024, months before the merger, Verisk had begun exploring a “bespoke integration” with ServiceTitan, one of AccuLynx’s primary competitors. A741. Jason Love, who oversaw Verisk’s integrations, presented the idea to Verisk

President of Property Estimating Solutions Aaron Brunko, A668, A682, A692, who approved launching discussions, A692. Love regularly updated Brunko on the ServiceTitan discussions. A679; B2.

In early July 2025, after speaking with other Verisk executives including Yang Chen (Verisk’s Head of M&A), Brunko directed his team to pause the discussions with ServiceTitan, A680. Chen explicitly suggested that they wait to correspond with ServiceTitan until after the merger and then “take a little time” to compare what AccuLynx “has vs what [ServiceTitan] has, and think about different levels of integration.” B3.

On August 5, just six days after signing the Agreement, Love informed ServiceTitan via email that Verisk would not proceed with a bespoke integration due to the AccuLynx acquisition. He wrote: “Now that the AccuLynx acquisition has been announced publicly, more information has been coming to Tony [Triola] and me. Considering this new information, we will not be able to continue down the path of placing Xactimate’s pricing data directly into [ServiceTitan]’s estimating solution.” B7. Verisk offered a standard integration instead, which ServiceTitan announced on September 17. *Id.*

C. ServiceTitan tells the FTC about Verisk’s email, triggering the FTC’s “market reset theory.”

The HSR Act imposes an initial waiting period of thirty days for antitrust review. 15 U.S.C. § 18a(b)(1). During that time, FTC staff typically reach out to

third parties to assess the merger’s impact. A718-19. If the FTC does not resolve its investigation within thirty days, it can extend the waiting period by issuing a “Second Request” for information, documents, and witness testimony. 15 U.S.C. § 18a(e)(1)(e). Parties can pull and refile their HSR submissions to give the FTC an additional thirty days and potentially avoid a Second Request. 16 C.F.R. § 803.12(a), (c).

Verisk submitted its HSR filing on August 19, 2025. Op. 13. On September 2, FTC attorney Ashley Masters contacted ServiceTitan’s General Counsel, Olive Huang, and scheduled a call for September 5. B23. During that call, Huang told Masters that ServiceTitan “had been pursuing a more bespoke integration with Verisk and [Verisk] changed their minds on pursuing that bespoke integration after the transaction was announced.” A742.

That call prompted the FTC to pursue a “market reset theory of harm,” which posited that the merger would impair competition because it would result in Verisk providing deeper integration to AccuLynx than to AccuLynx’s competitors. A630, A769.

D. Verisk repeatedly fails to disclose the ServiceTitan discussions in response to pointed questions from the FTC.

After hearing from ServiceTitan, the FTC repeatedly asked Verisk whether it had ever terminated integration discussions with any of AccuLynx’s competitors. Each time, Verisk failed to disclose the abandoned ServiceTitan discussions.

September 8. The FTC asked Verisk how post-merger integrations with AccuLynx would differ from “any current or planned” integrations between Verisk and AccuLynx’s competitors. A653. Verisk responded that “the technical integration development process for AccuLynx will follow the same standards and protocols applied for existing ecosystem partnerships, including ... [the] planned integration with ServiceTitan.” B17. Verisk did not mention its bespoke integration discussions with ServiceTitan.

September 12. The FTC asked Verisk to “[i]dentify all integrations ... terminated or changed to inactive status since 2015.” B25. Verisk did not mention the termination of the ServiceTitan discussions. B28-29.

September 15. Masters spoke with ServiceTitan regarding the difference between standard integrations and the “bespoke integration” ServiceTitan had discussed with Verisk. A743. During that call, Huang read Masters the August 5 email from Love. A742-43.

October 7. The FTC told Verisk it was specifically concerned that Verisk would provide AccuLynx a unique integration “not available or differently available to others.” A633; B36-37. Despite the obvious target of this inquiry, Verisk failed to disclose the ServiceTitan bespoke integration discussions. A633.

October 14. During an in-person meeting, FTC staff asked three separate times whether any AccuLynx competitor had asked Verisk for a materially different

integration and whether Verisk had declined to provide such an integration. A657. Brunko and Chen were present at the meeting, alongside Verisk’s outside counsel. A634. Although it was clear to Verisk’s counsel that the FTC knew the answer to these questions was “yes,” Brunko said he was unaware of any such discussions, and Chen stayed silent—even though Brunko had personally made the decision to end those discussions just a few months earlier after consulting Chen. A657-58; B3. The FTC stated it could not move forward until Verisk answered these questions, A751, and requested a “follow-up in writing about the specific question that they had asked three times during that meeting,” A809.

E. Verisk fails to conduct a reasonable search in response to the FTC’s questions.

To prepare its written response following the October 14 meeting, Verisk collected raw data from its project management database about countless Verisk integration partners—notwithstanding the FTC’s focus on *AccuLynx*’s competitors. B41, A668. After finding that data non-responsive, Brunko still did not look for data on AccuLynx’s competitors; instead, he used AI to create a script that pulled limited fields from the database that did not capture the ServiceTitan discussions. A668; A670. Brunko admitted he did not expect his search to answer the FTC’s questions. A670.

None of Verisk’s executives performed a basic keyword search of their emails—including Brunko, who decided to discontinue the ServiceTitan integration

discussions, and Chen, whom Brunko consulted on that decision—even though Chen did so with respect to other FTC questions and doing so could have easily reminded them of the ServiceTitan discussions. A637, A681, A715, A716.

Most perplexingly, no one told Love—the Verisk employee responsible for integrations—what the FTC’s questions were or asked if he knew of any discussions responsive to them. A682, A699, A691. The first time Love saw the FTC’s questions—at his deposition in this case—he testified that had he seen them earlier, he would have identified “exploratory conversations with ... companies ... , including ServiceTitan.” A699.

In its October 16, 2025 written response to the FTC, Verisk represented that it had “found no evidence that Verisk has declined to pursue an integration requested by a competitor of AccuLynx.” B42. Brunko reviewed the letter; Love did not. A681, A699. That same day, ServiceTitan gave the FTC a copy of Love’s August 5 email. A731.

F. Verisk again fails to disclose the ServiceTitan discussions in response to questions from FTC leadership.

On October 21, 2025, FTC Bureau of Competition Director Daniel Guarnera and Deputy Director David Shaw met with the parties’ counsel. Shaw raised the same question the FTC had asked five days earlier—specifically, how the FTC should “think about a fact pattern where a potential integration was being considered prior to the merger” and whether “Verisk made a decision not to pursue an

integration as a result of the merger.” A639. Presumably because Verisk had not disclosed the truth to its outside counsel, Verisk’s counsel failed to disclose the ServiceTitan discussions. A774.

The next day, the FTC issued a Second Request. A640. That same day, FTC Chairman Andrew Ferguson relayed to AccuLynx’s counsel that the FTC’s concerns arose because “a competitor told the FTC that they were about to integrate Xactimate with Verisk pre-transaction, and Verisk cut the discussions because of this deal.” A792. The parties eventually negotiated a “quick look” agreement with the FTC under which the FTC would conduct a targeted review by December 26 and then either approve the deal or require full compliance with the Second Request. Op. 29.

G. Verisk’s outside counsel finally discovers Verisk’s emails with ServiceTitan, but Verisk fails to mitigate the fallout.

On or around October 30, Verisk’s counsel finally learned about Verisk’s discussions with ServiceTitan. A641. Recognizing that the discussions were plainly responsive to the FTC’s questions, counsel disclosed them to the FTC during a call on November 4—nearly two months after the FTC learned of the discussions from ServiceTitan. A642. At Masters’ request, Verisk sent a letter on November 4 correcting its inaccurate responses from October 14 and 16. Verisk did not produce the emails relating to the ServiceTitan discussions showing Brunko’s and Chen’s personal involvement in the termination decision until two days later. B48; B50.

Masters replied to Verisk’s letter on November 5, emphasizing “Mr. Brunko’s failure to disclose the potential ServiceTitan integration with Xactimate pricing data in the October 14 meeting with FTC staff, the context for this nondisclosure, and the omission of that integration in your October 16 submission.” B50-51. Neither party’s antitrust counsel—each with decades of experience in merger reviews—had ever seen an email from FTC staff accusing a party of failing to disclose information to the FTC. A623-24, A776.

H. Verisk purports to terminate the Agreement after the FTC requires full compliance with the Second Request.

On December 1, the FTC told the parties it would likely require full compliance with its Second Request. A647. The parties submitted a joint memorandum to the FTC on December 11 advocating for a contrary decision and met with the FTC on December 16. Op. 32-33. But the die had been cast by Verisk’s actions. On December 24, the FTC announced it would not approve the merger by December 26 and would proceed to a full Second Request investigation. Op. 33.

On December 26, 2025, Verisk delivered written notice purporting to terminate the Agreement. *Id.*

II. Procedural History

On January 7, 2026, Verisk filed this lawsuit seeking a declaration that its termination of the merger was valid. A1. Sellers answered the complaint on January 21, 2026, asserting counterclaims for specific performance. A2-3. The Court of

Chancery granted Sellers’ motion for expedited proceedings and held a four-day trial in June. A66. Following post-trial briefing and argument, the court issued a decision on August 7, concluding that Verisk’s termination was invalid because its willful conduct was the primary cause of the FTC’s failure to approve the merger by the Outside Date. Op. 50. The court awarded specific performance, ordering Verisk “to perform under the Merger Agreement, including by using commercially reasonable efforts to obtain clearance required under the HSR Act and to close the Merger if the FTC approves the transaction.” Op. 62. The court specifically rejected Verisk’s argument that such remedy would be “unworkable,” highlighting that it has “ordered specific performance of efforts clauses in other similar cases.” Op. 61-62.

ARGUMENT

I. The August 5 Email Was “Willful Conduct.”

A. Question Presented

Whether Verisk’s decision to terminate the ServiceTitan negotiations and send the August 5 email constituted “willful conduct” under Section 9.1 of the Agreement, where there is no dispute that Verisk made the decision and sent the email voluntarily and intentionally. Op. 42-47, 51-52.

B. Scope of Review

“After a trial, findings of historical fact are subject to the deferential ‘clearly erroneous’ standard of review.” *Bank of N.Y. Mellon Tr. Co. v. Liberty Media Corp.*, 29 A.3d 225, 236 (Del. 2011). Only after “the historical facts are established” does de novo review apply to “whether the trial court properly concluded that a rule of law is or is not violated.” *Id.* Accordingly, the Court of Chancery’s interpretation of the term “willful conduct” is subject to de novo review, but the court’s factual finding that Verisk’s conduct was willful should “not be overturned unless it is found to be clearly wrong.” *Martin Marietta Materials, Inc. v. Vulcan Materials Co.*, 68 A.3d 1208, 1220 (Del. 2012).

C. Merits of Argument

1. As used in Section 9.1 of the Agreement, “willful conduct” means voluntary and intentional conduct.

The Court of Chancery correctly held that, as used in Section 9.1, “willful conduct” refers to “voluntary and intentional conduct.” Op. 47.

a. “When interpreting a contract, Delaware courts read the agreement as a whole and enforce the plain meaning of clear and unambiguous language.” *Manti Holdings, LLC v. Authentix Acquisition Co.*, 261 A.3d 1199, 1208 (Del. 2021). To ascertain the meaning of undefined terms, courts “look to dictionaries for assistance.” *Lorillard Tobacco Co. v. Am. Legacy Found.*, 903 A.2d 728, 738 (Del. 2006).

Dictionaries overwhelmingly define “willful” to mean deliberate, voluntary, or intentional. See, e.g., *Willful*, Merriam-Webster.com (Sept. 15, 2026), <https://tinyurl.com/yeypvncf> (“done deliberately: intentional”); *Willful*, The American Heritage Dictionary of the English Language, AHDictionary.com (2022), <https://tinyurl.com/yvdj8m2v> (“[s]aid or done on purpose; deliberate”); *Willful*, Webster’s New World College Dictionary 1656 (5th ed. 2020) (“said or done deliberately or intentionally ... SYN. voluntary”); *Willful*, Merriam-Webster’s Collegiate Dictionary 1797 (12th ed. 2026) (“done deliberately: intentional”). Legal dictionaries are in accord. *Ballentine’s Law Dictionary* defines “wilful act” to mean, in full, “[a]n act done intentionally, or on purpose, and not accidentally.” Ballentine’s

Law Dictionary (3d ed. 2010). And the first definition of “willful” in *Black’s Law Dictionary* is “[d]one wittingly or on purpose, as opposed to accidentally or casually; voluntary and intentional, but not necessarily malicious.” *Black’s Law Dictionary* 1922 (12th ed. 2024).

Verisk offers competing dictionary definitions (at 21) as supposed proof that willful “often”—not always—means “in conscious violation or disregard of the law, duty, or the rights of others.” *Willful*, Merriam-Webster.com, <https://tinyurl.com/yeypvncf>. But the import of the term “willful” depends “on the context in which it appears”—especially the noun it modifies. *Bryan v. United States*, 524 U.S. 184, 191 (1998). Here, context makes the meaning of “willful conduct” clear. Verisk’s proposed definition cannot withstand scrutiny because (a) this is a civil case, and (b) “willful” modifies the neutral word “conduct.”

First, “courts generally agree that there is some distinction in the meaning of willful depending on whether it is used in the civil or criminal context.” Op. 44 (cleaned up). The U.S. Supreme Court has observed, for example, that “the word ‘willfully’” “[m]ost obviously ... differentiates between deliberate and unwitting conduct, but *in the criminal law* it also typically refers to a culpable state of mind.” *Bryan*, 524 U.S. at 191 (emphasis added). By contrast, “[c]ivil use of the term ... typically presents neither the textual nor the substantive reasons for pegging the threshold of liability at knowledge of wrongdoing.” *Safeco Ins. Co. v. Burr*, 551 U.S.

47, 57 n.9 (2007); *cf. Waller v. Delaware*, 340 A.3d 1133, 2025 WL 1100909, at *4 (Del. 2025) (table) (in the context of “a showing of ‘willfulness’” required for a traffic violation, this Court “see[s] no fundamental difference ... between willful and intentional conduct”).¹

Verisk’s reliance on definitions of “willful” in the criminal context is thus misguided. For instance, *Black’s* derives Verisk’s favored definition of “willful” (as “blameworthy” and “stronger than voluntary or intentional,” AOB 21 (cleaned up)) from a criminal treatise. *Willful*, *Black’s Law Dictionary* (citing Rollin M. Perkins & Ronald N. Boyce, *Criminal Law* 875-76 (3d ed. 1982)). Other legal dictionaries also recognize this distinction: “[I]n civil proceedings, [willful] denotes an act that is intentional, or knowing, or voluntary, as distinguished from accidental,” while “[i]n a criminal statute, it generally means an act done stubbornly, obstinately, perversely, or with bad purpose.” *Willful*, *Barron’s Law Dictionary* 600 (7th ed. 2016).

Second, Verisk’s insistence (at 22-23) that willfulness can require “knowing or reckless conduct” in civil cases ignores the second key piece of context: the meaning of a phrase containing “willful” depends on what word “willful” modifies.

¹ Moreover, many criminal laws punish a “willful violation” of the law. *See, e.g.*, 18 U.S.C. § 924(a)(1)(D) (at issue in *Bryan*). As explained *infra*, that is critical: A “willful violation” indicates an intent to *violate* the statute, whereas “willful conduct” requires only intent to engage in the conduct.

Here, “willful” modifies the neutral word “conduct,” rather than a word like “violation” or “breach” that denotes a specific result. That makes all the difference.

The U.S. Supreme Court has explained this logic. In *Kawaauhau v. Geiger*, the Court interpreted a portion of the Bankruptcy Code rendering non-dischargeable any debt “for willful and malicious injury.” 523 U.S. 57, 59 (1998) (quoting 11 U.S.C. § 523(a)(6)). The Court explained that “‘willful’ in (a)(6) modifies the word ‘injury,’ indicating that nondischargeability takes a deliberate or intentional *injury*, not merely a deliberate or intentional *act* that leads to injury.” *Id.* at 61. The Court went further, positing that: “Had Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead ‘willful acts that cause injury.’” *Id.* That example—willful, modifying a neutral noun, followed by causation and a result—mirrors the Agreement’s language here, which applies where “willful conduct[] has been the primary cause of ... the failure to satisfy any condition.” A159. Under *Kawaauhau*’s reasoning, that language covers intentional acts even if they “unintentionally” resulted in the failure of a closing condition. 523 U.S. at 61; *cf. Blake v. Cnty. of Livingston*, 257 F. App’x 848, 852-53 (6th Cir. 2007) (in stalking statute requiring “a willful course of conduct,” “‘willful’ refers to the harassing course of conduct and not the ultimate result,” so the statute was violated where the subject “plainly meant to call (and email)” the victim (quotation marks omitted)).

Ballentine's Law Dictionary also demonstrates the importance of the word modified by “willful.” While it defines “wilful act”—a phrase indistinguishable from “willful conduct”—as simply “[a]n act done intentionally, or on purpose, and not accidentally,” it defines other phrases using “wilful” more culpably. “Wilful misconduct,” for example, means “[t]he intentional doing, or omitting to do something, either with the knowledge that such act or omission is likely to result in harm or with a wanton and reckless disregard of the consequences.” *Ballentine's Law Dictionary, supra*. In fact, the Agreement uses “willful misconduct” on multiple occasions, A152, A177, indicating the drafters understood the difference between “willful conduct” and “willful misconduct.”

Applying this reasoning to the Agreement, the Court of Chancery rightly explained that requiring a “willful breach” (a term used elsewhere in the Agreement) may “ratchet[] the required mental state up one level by requiring that the counterparty both have acted intentionally *and known that its action would cause a breach*.” Op. 47 (emphasis added) (quoting *XRI Inv. Holdings LLC v. Holifield*, 2024 WL 3517630, at *23 (Del. Ch. July 24, 2024)). By contrast, by using the phrase “‘willful conduct’ in the last sentence of Section 9.1, the Merger Agreement ratchets *down* the required mental state, prohibiting termination not only when a terminating party has intentionally breached the Merger Agreement, but also when the party has engaged in any voluntary and intentional conduct that caused a condition to fail.”

Op. 47. Put differently, where a “breach” must be “willful,” the breaching party must intend the *breach*; but where only “conduct” must be “willful,” the party need only intend the conduct itself. Courts have consistently distinguished “willful breach” from “willful conduct” in this manner. *See, e.g., XRI*, 2024 WL 3517630, at *23 (“[W]illful breach ... requires that a party intentionally act while knowing that the conduct would constitute a breach. The LLC Agreement does not seem to be targeting willful conduct in the sense of voluntary action.”); *PJT Holdings, LLC v. Costanzo*, 339 A.3d 1231, 1251 (Del. Ch. 2025) (explaining that ““willful breach”” does not mean “willful conduct generally” but “instead envisions a scenario in which the counterparty knows that its conduct would constitute a breach”).

That distinguishes this case from the authorities upon which Verisk relies. AOB 22-24. In nearly every one, “willful” modifies a word that denotes a specific, culpable result:

- “wilful or wanton *disregard* of the rights of others,” 25 *Del. C.* § 1501 (emphasis added), which is “the wilful and wanton standard of the guest statutes,” discussed in the cited paragraph of *Jardel Co. v. Hughes*, 523 A.2d 518, 528-29 (Del. 1987);
- “wilful *wrong*,” 6 *Del. C.* § 2-613 cmt. 1 (emphasis added);
- “wilful *violation*,” 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)

- (emphasis added); *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 129 (1988) (interpreting 29 U.S.C. § 255(a)); *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 606 (1993) (interpreting 29 U.S.C. § 626(b)); and *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 125 (1985) (same);
- “willfully *fails to comply*,” *Safeco*, 551 U.S. at 56-57 (emphasis added) (interpreting 15 U.S.C. § 1681n).

Neither of Verisk’s two remaining examples work either. Verisk first points (at 22) to a Delaware jury instruction that defines “willfulness” (without any modified noun) for purposes of a negligence jury charge. Del. P.J.I. Civ. § 5.10 (2025). That instruction relies on Delaware cases, including *Jardel*, which interpret the statutory phrase “wilful or wanton *disregard* of the rights of others.” 25 Del. C. § 1501 (emphasis added). It is therefore inapropos for the same reasons as *Jardel*.

Verisk’s reliance on the Delaware Telemarketing and Fraud Act, 6 Del. C. § 2507A(a)(3), is similarly inapposite. That statute makes it unlawful to “[w]ilfully call or contact any customer by telephone” for certain purposes where a customer has asked not to be contacted. *Id.* It defines “wilful” to mean “the person making or initiating the call or contact knows or should know of the customer’s instruction to not call or contact.” *Id.* For starters, this definition does not align with Verisk’s proposed interpretation—while Section 2507A(a)(3)’s definition of “wilful” requires knowledge of a *past* fact (the customer’s instruction not to call), Verisk’s

preferred definition requires knowledge of the *future* “result” that an action “will cause.” AOB 21. Regardless, this particular definition is of little value here. Where “a statute specifically defines a term,” the term’s statutory definition may be “different than its ordinary meaning.” *Tesla Inc. v. Del. Div. of Motor Vehicles*, 297 A.3d 625, 632 (Del. 2023). If anything, the fact that the legislature felt the need to include a definition with a knowledge requirement undermines Verisk’s argument that “willful” naturally includes such a requirement. *See Engineered Sales, Co. v. Endress + Hauser, Inc.*, 980 F.3d 597, 600 (8th Cir. 2020) (“When a statute defines a term, we understand that ‘[t]he legislature ... intends in some measure to depart from the ordinary sense of that term.’”).

Verisk briefly suggests, without elaboration, that the Agreement requires a willful “failure to satisfy any condition to the obligations of the Parties.” AOB 24 (quoting Op. 13). But that is not how the contract is written. Section 9.1 applies if a party’s “willful conduct[] has been the primary cause of, or primarily resulted in, the failure to satisfy any condition to the obligations of the parties.” A159. Willful modifies “conduct”—nothing else. The parties could have allowed termination only if, say, a party “willfully causes the failure of a closing condition.” If the modified word were “causes” rather than “conduct,” the outcome might be different. But that is not what the parties agreed to.

b. Even if the phrase “willful conduct” were ambiguous in isolation (it is not), “the contract as a whole” dispels any notion that “willful conduct” requires a party to realize the conduct’s probable results. “Delaware law instructs courts to evaluate ‘the contract as a whole’ and to give effect to all its provisions.” *Johnson & Johnson v. Fortis Advisors LLC*, 352 A.3d 229, 265 (Del. 2026). Verisk’s reading, however, would “leave negotiated provisions as surplusage.” *Id.* at 274.

The Agreement specifies four distinct circumstances when Verisk cannot terminate:

- First, Verisk cannot terminate if its “knowing and willful breach of this Agreement has prevented the satisfaction of the [closing] conditions ... set forth in Section 8.2,” A158 (§ 9.1(f)), regardless of whether the breach *primarily caused* the failure to close. *See* Op. 48-49 (explaining the difference in these causation standards). “Willful breach” is expressly defined to require an “intent of causing a breach of this Agreement.” A159.
- Second, Verisk cannot terminate if it is “in material breach of its obligations,” A159 (§ 9.1), regardless of the causal connection between that breach and the closing conditions not being satisfied.
- Third, Verisk cannot terminate if its “failure to fulfill its obligations or to comply with its covenants under this Agreement ... has been the primary cause of, or primarily resulted in, the failure to satisfy any [closing]

condition,” A159 (§ 9.1), regardless of whether that failure is “willful” or constitutes a “material breach.”

- Fourth, Verisk cannot terminate if its “willful conduct has been the primary cause of, or primarily resulted in, the failure to satisfy any condition to the obligations of the parties hereunder,” A159 (§ 9.1), whether or not that willful conduct constituted a breach of the Agreement.

Notably, one of the termination exceptions requires “willful breach,” while another (at issue here) requires only “willful conduct.” Because “the use of different language in different sections of a contract suggests the difference is intentional,” *Benchmark Invs. LLC v. Pacer Advisors, Inc.*, --- A.3d ---, 2026 WL 1179508, at *5 (Del. Apr. 30, 2026), the Court of Chancery correctly concluded that “the parties intended [‘willful conduct’] to mean something other than ‘willful breach.’” Op. 46.

Under Verisk’s interpretation, the “willful conduct” provision would be superfluous because any “willful conduct” that caused the failure of a closing condition would also be “willful breach,” independently foreclosing termination. For example, a party that knowingly or recklessly prevented or delayed FTC approval would also breach the contractual duty to use “commercially reasonable efforts to promptly obtain any clearance required under the HSR Act” under Section 6.1. A143. This Court should give “effect to all [of the contract’s] provisions,” *Johnson & Johnson*, 352 A.3d at 265, and reject an interpretation that would limit the “willful

conduct” provision to scenarios where the “willful breach” provision already bars termination.

Verisk has consistently struggled to give the “willful conduct” and “willful breach” provisions independent meaning. When the Court of Chancery pressed Verisk on this issue, Verisk mustered only that willful conduct “is conduct that comes close to [willful breach] that is other willful conduct.” B155-56. Verisk now interprets “willful conduct” to cover “immaterial breaches and non-breaching conduct that would nevertheless foreseeably obstruct the contract.” AOB 29. But it is difficult to fathom what conduct could intentionally and foreseeably obstruct the Agreement yet not constitute a breach (particularly given the obligation to use commercially reasonable efforts), or how a breach resulting in termination could be immaterial. Under Verisk’s interpretation, the “willful conduct” provision’s coverage would be vanishingly small, if not nonexistent. Verisk’s interpretation would also collapse the meaning of “willful conduct” and “willful misconduct”—since the Agreement uses both, A152, A177, those terms must mean different things. *Benchmark Invs.*, 2026 WL 1179508, at *5.

Verisk’s own surplusage argument fails. According to Verisk, because “virtually everything a corporation does or does not do is volitional,” the Court of Chancery’s definition of willful “encompasses every corporate action,” rendering the term “meaningless.” AOB 19, 26-27. Verisk ignores that corporations act through

natural persons, who can act involuntarily or accidentally. For example, if Verisk had sent the email by accident—if, say, Love had inadvertently hit send on a draft he never intended to transmit—that conduct would not be willful. So, as used in Section 9.1, the word “willful” is not surplusage—it ensures that involuntary or accidental conduct does not nullify a party’s termination rights.

c. For all these reasons, Verisk has it backwards when it argues that the Court of Chancery ordered “relief that is irreconcilable with the terms [the parties’] chose”—namely, a “definite Termination Date.” AOB 45. The parties did not negotiate an absolute right to terminate after the Outside Date; they negotiated a number of critical exceptions, including the “willful conduct” provision. A158-59. In any event, the Court of Chancery rejected Verisk’s argument that specific performance would be “unworkable,” Op. 61, and Verisk does not challenge the court’s remedy ruling here, despite Verisk’s passing mention of the relief ordered.

Verisk’s alarmism about the “adverse effects” of affirmance is equally baseless. AOB 45. Verisk’s claim that the Court of Chancery’s decision will “create[] uncertainty for M&A practitioners” and leave them “afraid that any innocent corporate act will risk breach of contract,” AOB 8, ignores that the decision below turns on the use of “willful *conduct*” in this particular Agreement—including the Agreement’s context of separately using and defining “willful breach” as distinct from “willful conduct.” Op. 45-47 (emphasis altered). Nothing prevents practitioners

who wish to use different language or definitions from doing so, and Verisk provides no evidence suggesting the “willful conduct” provision used here is common. *See PJT Holdings*, 339 A.3d at 1250 (“The *Hexion* decision interpreted an acquisition agreement, and since then, parties to acquisition agreements have often contracted around that interpretation by defining a term like willful breach to require that the breaching party know its intentional conduct constitutes a breach.”); *XRI*, 2024 WL 3517630, at *22 (similar).

In any event, policy arguments have no place where the contractual language is clear. Instead, “Delaware policy” supports “freedom of contract and ... enforcing commercial contracts as written.” *Navient Sols., LLC v. BPG Off. Partners XIII Iron Hill LLC*, 315 A.3d 1164, 1182 (Del. Super. Ct. 2024); *accord 26 Cap. Acquisition Corp. v. Tiger Resort Asia Ltd.*, 309 A.3d 434, 473 (Del. Ch. 2023) (“To say that Delaware prides itself on the contractarian nature of its law risks understatement.”). If anything, the interests in deal certainty, holding parties to their bargain, and committing parties to act as partners after signing deals favors enforcing the Agreement as written. *Cf. Desktop Metal, Inc. v. Nano Dimension Ltd.*, 2025 WL 904521, at *1 (Del. Ch. Mar. 24, 2025) (awarding specific performance of merger in “another victory for deal certainty”).

2. Verisk’s decision to terminate negotiations and send the August 5 email was “willful conduct” under any understanding of the phrase.

Verisk does not and cannot dispute that its actions constitute “willful conduct” under the Court of Chancery’s interpretation of that phrase to mean “voluntary and intentional conduct.” Op. 47. Verisk’s high-ranking executives made a deliberate decision to end the ServiceTitan negotiations, and no one has ever suggested that Love sent the email by accident.

Even under Verisk’s mistaken interpretation—under which “willful conduct” requires Verisk to have known or recklessly disregarded the risk of delaying FTC approval, AOB 8-9—Verisk’s conduct easily qualifies as “willful.” At minimum, Verisk acted with reckless disregard for the consequences of terminating negotiations with one of AccuLynx’s major competitors, A681-82, while citing the merger as the reason for doing so, B7. No reasonable actor—and particularly not one with the experience of Verisk’s executives involved in the decisionmaking—would risk creating evidence of potentially anticompetitive conduct that could attract FTC scrutiny during a pending merger review. *See* A722 (Verisk’s decision to stop the ServiceTitan negotiations “in the FTC’s mind raised questions of what Verisk’s incentives would be after this merger”). Verisk’s conduct was reckless regardless of whether the email ultimately justifies blocking the deal (it should not) because it is

the FTC's added scrutiny that delayed closing, not a final determination as to whether it would seek to block the merger.

Verisk claims it had no reason to think Love's email would trigger FTC scrutiny because both AccuLynx and Verisk believed when they signed the Agreement "that the Merger presented minimal antitrust risk." AOB 25 (quoting Op. 51). But Verisk's reliance on the parties' antitrust predictions at the time of signing is misguided, as the parties did not account for Verisk's ill-advised email sent days later (and AccuLynx did not learn about that email for months). Verisk wrongly claims that "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.'" AOB 25 (emphasis added) (quoting Op. 52 n.177). In truth, the court stated only that "Verisk *argues*" those propositions. Op. 52 n.177 (emphasis added).

II. Verisk’s Willful Conduct Was the Primary Cause of the Failure of the Closing Conditions.

A. Question Presented

Whether Verisk’s decision to terminate the ServiceTitan negotiations and send the August 5 email was “the primary cause” of the failure of the merger clearance closing condition when that conduct “was more than just important to the FTC’s analysis [I]t was the reason why the FTC needed to investigate the transaction.” A729 (opinion of Verisk’s expert Holly Vedova).

B. Scope of Review

As discussed above, this Court reviews the “contract interpretation component” of the Court of Chancery’s decision de novo and “the challenged factual component” for clear error. *Martin Marietta*, 68 A.3d at 1220.

Despite these “well established” standards of review, *Bank of N.Y. Mellon*, 29 A.3d at 236, Verisk urges this Court to review de novo the factual determination that the August 5 email was the primary cause of the delay in closing. Verisk’s authorities do not support this request. *DCV Holdings, Inc. v. ConAgra, Inc.* states generally that the Court “review[s] the Superior Court’s application of law to its factual and credibility determinations de novo.” 889 A.2d 954, 960 (Del. 2005). But causation is a factual determination entitled to deferential review. *See Bako Pathology LP v. Bakotic*, 288 A.3d 252, 275 (Del. 2022) (“[T]his Court reviews the issue of proximate cause for clear error.” (quotation marks omitted)); *Travelers Cas. & Sur.*

Co. v. Blackbaud, Inc., 361 A.3d 59, 69 (Del. 2026) (same). As for Verisk’s reliance on *Sims v. Stanley*, that case also confirms that “causation is fact-driven.” 945 A.2d 1168, 2008 WL 853538, at *2 (Del. Apr. 1, 2008) (table). *Sims* applied de novo review only because the appeal was from a summary judgment ruling.

C. Merits of Argument

In finding that the August 5 email was the “primary cause” of the failure of the closing condition, the Court of Chancery first explained how the email “cause[d]” the delay in FTC approval, applying traditional proximate causation principles under Delaware law. Op. 50-56. But the court’s analysis did not stop there. After thoroughly considering the evidence, the court found that the email was not just any cause but “the ‘primary’ cause.” Op. 56. Because the court’s legal framework aligns with Verisk’s current position and the proper understanding of “primary cause,” and because its factual conclusion was not clearly erroneous, this Court should affirm.

1. The Court of Chancery’s proper interpretation of “primary cause” aligns with Verisk’s proposed definition.

Verisk argues that “the primary cause” means “the most important cause.” AOB 32-38. A faithful reading of the Court of Chancery’s opinion reveals that it applied the same interpretation of “primary cause” that Verisk advances. The court asked first whether Verisk’s willful conduct was *a* cause (by applying traditional causation principles that allow multiple causes), and then whether it was *the primary*

cause (by applying the ordinary meaning of “primary”). Verisk fails to articulate how that analysis is erroneous.

Start with how the court defined “the primary cause.” Op. 47-50. It recognized that before something can be the *primary* cause of an occurrence, it must be *a* cause. The court therefore drew on principles of proximate causation to explain what is required for something to be a “cause” under Delaware law. Op. 49-50. Verisk urges that the court “committed legal error when interpreting ‘the primary cause’ to incorporate elements of the tort-law concept of proximate, or ‘but-for’ cause.” AOB 32. But in doing so, the court was simply tracking Verisk’s pre-trial brief, which argued that “‘primary cause’ means ‘proximate cause,’ which means ‘[a] cause that directly produces an event and without which the event would not have occurred.’” A607 (emphasis omitted) (quoting *Primary Cause*, Black’s Law Dictionary). Verisk cannot complain about the Court of Chancery invoking the same proximate-cause principles that Verisk itself cited. *Cf. Salt Meadows Homeowners Ass’n v. Zonko Builders, Inc.*, 312 A.3d 195, 204 (Del. 2024) (a party cannot complain that the court erred by entering the order the party requested).

Regardless, the court did not equate “the primary cause” with proximate cause—even though Verisk had invited it to. While acknowledging that “[g]enerally, under Delaware law, ‘there may be more than one proximate cause,’” the court recognized that the Agreement imposes a more demanding standard: “Under

Section 9.1, to foreclose termination, Verisk’s conduct must have been the *primary* cause of the failed condition.” Op. 50 (emphasis in original); *see* Op. 48-49 (explaining that, by using this language, the Agreement “*increases* the required showing for causation from ‘contribut[ing] materially’ ... to being the ‘primary cause of’ the failed condition” (emphasis added)). The court thus recognized that being a proximate cause was necessary but not sufficient for something to be “the primary cause,” and that while there may have been multiple proximate causes of the failure to close, the question was whether Verisk’s willful conduct was *the* (singular) *primary* one.

The Court of Chancery’s application of this standard to the facts bears this out. It first explained why the August 5 email proximately caused the closing conditions to fail. Op. 50-55. The court needed to conduct this analysis because Verisk had argued that the August 5 email was not even *a* cause of the failure. *E.g.*, A609. After establishing that Verisk’s conduct was *a* cause, the court proceeded to consider and reject Verisk’s argument that its conduct “was not the ‘primary’ cause,” because “AccuLynx met its burden to prove that the August 5 Termination Email was the primary cause of the Second Request, which prevented the HSR waiting period from expiring before the Termination Date.” Op. 56.

To the extent Verisk complains that the court did not state explicitly that “primary” means “most important,” neither did Verisk. That phrase, which appears

sixteen times in Verisk’s appeal brief, is absent from its pretrial and post-trial briefing. Nor did Verisk cite any of the authorities it now uses to support this proposition. A607. Regardless, the court clearly understood that Verisk’s conduct had to be not merely a proximate cause but also “the *primary* cause.” Op. 50.

In sum, because the Court of Chancery’s understanding of primary cause did not materially differ from Verisk’s position in its post-trial briefing or on appeal (and is correct regardless), Verisk cannot escape clear-error review.

2. The Court of Chancery did not clearly err in finding that the August 5 email was “the primary cause” of the failure of the closing conditions.

Because the Court of Chancery’s factual conclusion that Verisk’s email was the primary cause of the delay in closing is reviewed under the “deferential” clear-error standard, this Court cannot “re-weigh the evidence.” *Eagle Force Holdings, LLC v. Campbell*, 235 A.3d 727, 735-36 (Del. 2020) (quotation marks omitted). “Where there are two permissible views of the evidence, the factfinder’s choice between them cannot be clearly erroneous,” even if “independently [this Court] might have reached different conclusions.” *Id.* at 735-37 & n.37 (quotation marks omitted); accord *Montgomery Cellular Holding Co. v. Dobler*, 880 A.2d 206, 219 (Del. 2005) (“[F]actual findings will not be set aside on appeal unless they are clearly wrong and the doing of justice requires their overturn.”).

The Court of Chancery’s finding was not erroneous at all, and it certainly was not “clear error.” Verisk argues that its conduct was not the primary cause of the failure to close because the FTC issued the Second Request based on its “market reset theory.” AOB 35. But the record is clear that Verisk’s August 5 email was *the* reason the FTC embraced that theory and pursued an aggressive investigation based on it. As the Court of Chancery put it, “the FTC would not have been seriously concerned about a potential ‘market reset’” had not “one specific event—Verisk’s August 5 Termination Email—provided the FTC with tangible evidence that its concerns were more than theoretical.” Op. 54.

Verisk conspicuously ignores the admission of its own regulatory expert, former Director of the FTC’s Bureau of Competition Holly Vedova, that “Verisk’s termination of the more robust integration pricing discussions with ServiceTitan was more than just important to the FTC’s analysis, ... it was *the reason* why the FTC needed to investigate the transaction.” A729 (emphasis added). That testimony is alone sufficient to support the Court of Chancery’s factual finding that the August 5 termination email was the primary cause of the FTC’s prolonged investigation and the resulting failure to satisfy the closing conditions.

If more evidence were needed, it exists in spades. The Court of Chancery explained that “ServiceTitan was the only AccuLynx competitor who had numerous calls with the FTC, the only competitor that received a subpoena, and the only

competitor with whom the FTC engaged on critical dates throughout the process.” Op. 56 (citing A729). And the FTC continually pressed Verisk throughout the critical period with questions clearly intended to elicit information about Verisk’s termination of the ServiceTitan discussions and the all-important August 5 email. Op. 53; *supra* at 9-13. Given this evidence, it was not error—let alone clear error—for the Court of Chancery to conclude that “[m]ore likely than not, the August 5 Termination Email was the primary cause of the FTC’s concerns.” Op. 56.

Verisk’s bullet-point list of other “post-August 5 events” that supposedly contributed to the FTC’s decision, AOB 35-37, is an improper “invitation to re-weigh the evidence.” *Eagle Force*, 235 A.3d at 736. It is also unpersuasive. The items in Verisk’s list—which is devoid of any legal or factual analysis—fall into two categories. First, Verisk points to other factors that may have contributed the FTC’s extended review. But Verisk does not contend that any of those factors should be considered “the primary cause,” which Verisk concedes must refer to the single most important cause. The Court of Chancery did not clearly err in finding that Verisk’s willful conduct played a more important role than any other factor in bringing about the FTC’s decisions. Second, Verisk cites evidence suggesting that a Second Request was potentially avoidable after August 5. But even if the failure to close was not *inevitable* after August 5, that does not mean the email was not the “primary cause.”

A patch of ice on the road can be the primary cause of a car crash even if the driver had a chance to deploy emergency brakes before hitting the tree.

Ultimately, Verisk’s list is just an effort to relitigate the evidence that the Court of Chancery carefully considered. The court’s factual determination that the August 5 email was the primary cause of the delay was, at minimum, a “permissible view[] of the evidence,” *Coster v. UIP Cos.*, 300 A.3d 656, 663 (Del. 2023), and “the product of a logical and orderly reasoning process,” *DCV Holdings, Inc.*, 889 A.2d at 960. Verisk cannot overcome this conclusion simply by pointing to competing evidence.

Verisk’s argument that “the FTC’s decision to issue the Second Request” was a “superseding cause” of the failure to satisfy the closing conditions, AOB 39, is circular at best. Although the decision to require full compliance with the Second Request was the final event that extended the waiting period beyond the Outside Date, Second Requests do not magically appear. The question is *what caused the Second Request*. Verisk too frames the question presented as “[w]hether 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.” AOB 31 (emphasis added). And Verisk’s own expert admitted that the email was *the* cause of the Second Request.

In any event, the Court of Chancery’s finding that the Second Request did not “break[] the causal connection” between Verisk’s email and the failure of the closing condition is not clearly erroneous. *Duphily v. Del. Elec. Co-op. Inc.*, 662 A.2d 821, 829 (Del. 1995). A superseding cause is a “new and independent act” that was not “reasonably foreseeable.” *Id.*; see *GMG Ins. Agency v. Edelstein*, 328 A.3d 302, 316-18 (Del. 2024) (a subsequent event that is ““within the scope of the risk created by [defendant’s] conduct”” is not a superseding cause, even if defendant “could not foresee the precise event that might lead to or trigger the adverse ... result” (quoting Restatement (Second) of Torts § 442B (1965))). As discussed, the FTC’s Second Request was not a “new and independent act” from the August 5 email—it was sparked by that exact email. Moreover, it was “reasonably foreseeable” that such an ill-advised email—telling an AccuLynx competitor that Verisk was terminating negotiations because of the pending merger with AccuLynx—could trigger antitrust scrutiny and delay closing. *See supra* at 30-31. Therefore, “the causal connection between [Verisk’s willful conduct] and the resulting injury remains unbroken.” *Duphily*, 662 A.2d at 829.

III. Verisk also breached its obligation to use commercially reasonable efforts to obtain antitrust approval.

A. Question Presented

Whether Verisk used commercially reasonable efforts (“CRE”) to do all things necessary to close the FTC’s investigation and consummate the transaction, when it emailed a major AccuLynx competitor tying termination of integration discussions to the pending merger and then failed to disclose that fact in response to repeated, on-point inquiries from the FTC.

B. Scope of Review

This Court reviews “the Court of Chancery’s conclusions of law de novo and its factual findings with a high level of deference.” *DV Realty Advisors LLC v. Policemen’s Annuity & Ben. Fund*, 75 A.3d 101, 108 (Del. 2013) (footnote omitted).

C. Merits of Argument

As Verisk concedes, the Court of Chancery did “not definitively decide whether Verisk breached its commercially reasonable efforts obligations.” AOB 41 (quoting Op. 42). This Court thus need not reach the CRE issue to affirm. But to the extent it does, the record conclusively shows that Verisk breached its CRE obligations by repeatedly taking objectively unreasonable actions that impeded FTC approval.

Under Delaware law, CRE covenants “impose obligations to take all reasonable steps to solve problems and consummate the transaction.” *Akorn, Inc. v.*

Fresenius Kabi AG, 2018 WL 4719347, at *87 (Del. Ch. Oct. 1, 2018) (quoting *Williams Cos. v. Energy Transfer Equity, L.P.*, 159 A.3d 264, 272 (Del. 2017)); see *Desktop Metal*, 2025 WL 904521, at *23 (CRE covenant required “each party to take appropriate actions to keep the deal on track” (quotation marks omitted)). The Agreement’s CRE covenants track this definition, requiring Verisk to (1) “take ... all actions, and to do ... all things necessary, proper, or advisable” to consummate the Merger “as soon as reasonably practicable,” A138, and to “use commercially reasonable efforts to obtain an early termination of any applicable [HSR Act] waiting period,” A139. Stated otherwise, the Agreement obligated Verisk to (a) refrain from taking detrimental actions and (b) take all affirmative steps necessary to solve problems and consummate the planned merger. A142-43. Verisk committed multiple independent breaches of that duty.

First, Verisk breached its CRE duty when it sent the August 5 email tying its discontinuation of the ServiceTitan negotiations to the pending merger. As discussed, it was foreseeable that sending such an email would trigger heightened antitrust scrutiny and delay closing. It was commercially unreasonable for a company that had just signed a merger agreement subject to FTC review to engage in conduct that would foreseeably invite heightened FTC scrutiny. *See supra* at 30-31. Tellingly, before deciding to end the ServiceTitan discussions, Brunko consulted with Chen—Verisk’s experienced head of M&A, who had worked on hundreds of

deals as an investment banker before joining Verisk and overseen ten to twenty HSR submissions at Verisk. A674, A710. Verisk thus understood the risks and sensitivities involved in this course of action. A677.

Second, Verisk further breached its CRE duty when, after creating the basis for the FTC’s investigation, Verisk did not take reasonable steps to clean up the mess it had made. Despite repeatedly receiving questions from the FTC focusing explicitly on Verisk’s third-party integrations, Verisk failed to disclose the ServiceTitan discussions—even when its executives were asked three separate times during the October 14 meeting whether any AccuLynx competitor had requested a more robust integration and whether Verisk had declined any such request.

Verisk defends this conduct by pointing to the court’s finding that the Verisk employees “did not remember [the ServiceTitan] discussions or understand that they were responsive to the FTC’s inquiries.” AOB 44 (quoting Op. 41). But the court also deemed it “confounding that the same sophisticated businesspeople who decided in August to terminate discussions with ServiceTitan ... somehow did not recall or appreciate the significance of those events when the FTC asked about them weeks later.” Op. 39. An inexplicable and “confounding” memory lapse is unreasonable.

Commercial reasonableness is “an objective standard,” meaning Verisk’s “‘subjective intent or state of mind’ does not determine whether it complied with its

obligations.” *S’holder Representative Servs. LLC v. Alexion Pharms., Inc.*, 2024 WL 4052343, at *36 (Del. Ch. Sept. 5, 2024). Under the circumstances here—where the FTC asked question after question about integrations and cancelled integrations, where it was clear to others in the room the FTC believed the answer was yes, and where the Verisk executives in the room (Brunko and Chen) had personally made the decision to kill the ServiceTitan integration just weeks earlier—it was objectively unreasonable for them not to remember or not understand what the FTC was asking.

Third, Verisk breached its CRE duty yet again when it failed to conduct a reasonable search in response to the FTC’s inquiries. In particular, it was objectively unreasonable for Verisk not to even communicate the FTC’s questions to Love, who ran Verisk’s integration team and who admitted that he would have known exactly what the FTC was asking about. A699. Yet Verisk did not consult with Love before sending its written response to the FTC. A682, A691, A699.

Citing *In re Anthem-Cigna Merger Litigation*, 2020 WL 5106556, at *5 (Del. Ch. Aug. 31, 2020), Verisk insists that its “good-faith efforts” preclude any challenge to the commercial reasonableness of its actions. But CRE requires more than good faith; it requires objective reasonableness. *S’holder Representative Servs.*, 2024 WL 4052343, at *37 (CRE goes “beyond the buyer’s subjective good faith in imposing an objective standard” (cleaned up) (footnote omitted)). In *Anthem*, the evidence showed that Anthem’s actions were objectively reasonable because it pursued an

“optimal strategy” for obtaining regulatory approval that its counterparty, Cigna, agreed to in real time. 2020 WL 5106556, at *130-31. Here, by contrast, sending an email that would foreseeably trigger additional FTC scrutiny and then failing to respond adequately to the FTC’s questions about that email was not an “optimal” or objectively reasonable strategy for obtaining merger approval, and AccuLynx did not agree to any of this.

Nor is Verisk correct to characterize AccuLynx’s challenge as run-of-the-mill “second-guessing.” AOB 44. A CRE analysis requires a careful examination of the breaching party’s conduct at the time of the alleged breaches. *Alta Partners, LLC v. Suncar Tech. Grp., Inc.*, 2026 WL 1552652, at *10 n.22 (S.D.N.Y. June 2, 2026) (rejecting argument that non-breaching party was improperly using hindsight and explaining that “determin[ing] whether [a party’s] conduct was sufficient to satisfy a best efforts obligation” requires that “a finder of fact put[] a promisor’s actual conduct at the time of the purported breach under a microscope” to “determine whether the promisor could and should have acted differently at that time”). Carefully examining Verisk’s conduct in light of the facts Verisk knew or reasonably should have known at the time is not hindsight or second-guessing; it is how one determines whether Verisk’s actions satisfied CRE. The evidence proves they did not.

CONCLUSION

This Court should affirm.

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CERTIFICATE OF SERVICE

I hereby certify that on September 29, 2026, a copy of the foregoing *Appellees' Answering Brief* was served via File & ServeXpress on the following attorneys of record:

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