



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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INTRODUCTION

Verisk's August 5, 2025, email to ServiceTitan was not "willful conduct" that was "the primary cause" of the merger's failure to close by the Termination Date. Op. 13. In civil law, conduct is "willful" only if the actor knows or should know it will cause a particular negative consequence. *See, e.g., Jardel Co. v. Hughes*, 523 A.2d 518, 530 (Del. 1987). Sending the email was not "willful conduct" because the Court of Chancery's post-trial findings and the undisputed record show that Verisk had no reason to believe the email would prevent a timely closing. And sending the email was not "the primary cause" of the closing delay because the record—including testimony from AccuLynx's expert and FTC counsel—shows that the FTC delayed the merger based on its novel antitrust concerns developed after speaking with AccuLynx competitors and the parties, not a single email. Accordingly, the email did not negate Verisk's right to terminate the Merger Agreement. The Court of Chancery's contrary conclusions rest on multiple legal errors.

AccuLynx disputes these straightforward conclusions, but its arguments contradict the law, the Merger Agreement, and the record. On willfulness, AccuLynx primarily argues that the term "willful" in Section 9.1(f) just means volitional, either because that is the general rule in civil law or because "willful" here is paired with "conduct" rather than a word like "breach." But numerous authorities recognize that in civil law, the word "willful" requires a culpable mental state like knowledge of or

reckless disregard for a particular consequence, including when paired with a neutral noun like “act.” *See, e.g., Warren v. United States*, 340 U.S. 523, 528 (1951). By contrast, AccuLynx’s authorities do not support its attempt to water down “willful,” and doing so would effectively read the word out of the Merger Agreement since it is hard to imagine any non-volitional conduct that could cause the failure of a closing condition.

On causation, AccuLynx claims that this Court should defer to the Court of Chancery because its primary cause conclusion was a factual finding subject to clear error review. But the trial court’s primary cause analysis is reviewed *de novo*, both because the court applied tort-law causation principles rather than the Merger Agreement’s plain meaning, and because causation is a mixed question of law and fact and the relevant facts are undisputed. *See, e.g., Scharf v. Edgcomb Corp.*, 864 A.2d 909, 916 (Del. 2004). Regardless, under any standard of review, the court’s finding that the ServiceTitan email was the closing delay’s primary cause fails because the court’s own findings and the undisputed record show that the FTC actions that delayed the merger were based on the FTC’s novel antitrust theory developed after speaking to multiple AccuLynx competitors, not one email to one competitor.

Ultimately, AccuLynx’s arguments are little more than an effort to negate the Termination Date both parties negotiated based on FTC-related delays that neither

party expected. But Delaware law enforces contracts, and this one allowed Verisk to terminate if the deal did not close on time except in narrow conditions that are not satisfied here. The Court of Chancery compounded its legal errors by imposing an award of specific performance completely contrary to the parties' desire for a quick close or none at all. The Court should hold that Verisk properly terminated the Merger Agreement and reverse.

ARGUMENT

- I. **VERISK’S AUGUST 5, 2025, EMAIL TO SERVICE TITAN WAS NOT “WILLFUL CONDUCT.”**
- A. **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.**

Section 9.1 of the Merger Agreement provides that a party may not invoke its termination rights if its “willful conduct[] has been the primary cause of” the failure to satisfy a closing condition. Op. 13. Under well-settled legal principles reflected in caselaw, Delaware statutes and jury instructions, and legal dictionaries, conduct is “willful” in a civil context only when a person knows or should know that it will cause a particular, usually wrongful, result. Br. 20-24. That is how the Merger Agreement uses the term “willful,” defining “willful breach” as a breach caused by “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).

The August 5 ServiceTitan email was not “willful conduct” that could negate Verisk’s termination right. That is because the Court of Chancery’s own findings show that Verisk had no reason to suspect that the email would delay the merger’s closing. Br. 25-26.

B. AccuLynx’s counterarguments lack merit.

AccuLynx argues that “willful conduct” is any volitional conduct, so the August 5 email was “willful conduct” because it was sent intentionally. Opp’n 17-19, 30. Alternatively, AccuLynx argues that even if “willful” requires a higher mental state, the email was at least reckless because Verisk should have known that sending it would cause the FTC to develop a novel antitrust theory delaying the merger’s closing. Opp’n 30-31.

All those arguments lack merit. In civil law, “willful” does require a higher mental state—knowing or reckless conduct. Nothing in the Merger Agreement requires a different reading. Under the correct standard, the record makes clear that the ServiceTitan email was not reckless conduct amounting to “willful conduct.” And adopting AccuLynx’s strikingly broad definition of “willful” would result in drastic unintended consequences for Delaware corporations, either in the termination context or in the countless other contexts where the term “willful” is used, upsetting drafting parties’ expectations by rendering virtually every corporate act “willful.”

1. Background civil law principles do not define “willful conduct” as conduct that is merely volitional.

a. AccuLynx first argues there is a background presumption that when used in a civil context, the term “willful” refers to conduct that is merely “voluntary and intentional”—*i.e.*, not accidental or coerced—and does not require any

particular mental state. Opp’n 17-19. AccuLynx claims that “willful” requires a particular mental state only in the criminal context. *Id.* Not so.

i. While there is a difference in how “willful” is used in criminal and civil contexts, the distinction concerns what mental state is necessary, not whether “willful” requires any mental state at all. As the U.S. Supreme Court has explained, “[w]hen the term ‘willful’ or ‘willfully’ has been used in a criminal statute, [courts] have regularly read the modifier as limiting liability to knowing violations” because a defendant cannot have had the “specific intent” necessary to commit most crimes “unless he ‘acted with knowledge that his conduct was unlawful.’” *Safeco Insurance Co. of America v. Burr*, 551 U.S. 47, 57-58 n.9 (2007). By contrast, civil law typically permits liability for knowing or reckless conduct. *Id.* at 57. As a result, in a civil context, “willfulness ... cover[s] not only knowing violations of a standard, but reckless ones as well.” *Id.* Importantly, even in a civil context, “it is generally understood” that the term “willful” does not encompass conduct that was “merely negligent.” *McLaughlin v. Richland Shoe Co.*, 486 U.S. 128, 133 (1988). Put simply, in criminal law, willfulness requires knowingly wrongful conduct; in civil law, it requires knowing or reckless conduct. But it never encompasses merely non-accidental conduct.

ii. All of this is why, as the opening brief explains (at 20-24), numerous authorities recognize that in civil contexts, “willful conduct” is conduct that a person knows or should know will cause a particular, usually wrongful, result. For example:

- In *Jardel*, this Court explained that in the tort context, “wilful conduct” requires “an awareness, either actual or constructive, of one’s conduct and a realization of its probable consequences.” 523 A.2d at 530.
- Delaware’s Pattern Jury Instructions for Civil Practice explains 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 repeatedly used that understanding of willfulness in civil penalty provisions. See 6 Del. C. §§ 2409C(c), 2427B(c), 2505F(d), 2506B(c), 2507A(a)(3), 2510(e), 2510E(c), 2513D(c), 2522(b), 2533(e), 2590(c), 3683(a).
- The U.S. Supreme Court has repeatedly held that willfulness requires knowing or reckless conduct in the civil context. See *Safeco*, 551 U.S. at 57; *McLaughlin*, 486 U.S. at 133; *Hazen Paper Co. v. Biggins*, 507 U.S. 604, 617 (1993); *Trans World Airlines, Inc. v. Thurston*, 469 U.S. 111, 126 (1985).
- And several respected legal dictionaries have defined “willfulness” as requiring the “intention to cause some result through a given action,” without limiting that definition to criminal law. *Willfulness*, *Wolters Kluwer Bouvier Law Dictionary Desk Edition* (2012); see also *Willful*, *Black’s Law Dictionary* (12th ed. 2024); *Willful*, *Merriam-Webster’s Dictionary of Law*, Merriam-Webster Online, <https://www.merriam-webster.com/dictionary/willful#legalDictionary>; *Willful*, *Nolo’s Plain-English Law Dictionary*, <https://dictionary.nolo.com/willful-term.html>.

iii. Unsurprisingly, none of AccuLynx’s authorities supports its claim that any voluntary conduct is “willful” in civil law.

AccuLynx first cites (Opp’n 17) several common usage dictionaries defining “willful” as “deliberate, voluntary, or intentional.” But “willful” is a legal term of art with “a settled meaning.” *XRI Investment Holdings LLC v. Holifield*, 2024 WL 3517630, at *20 (Del. Ch. July 24, 2024). “[W]here a word has attained the status of a term of art and is used in a technical context, the technical meaning is preferred over the common or ordinary meaning.” *Id.* The parties here used the term “willful” in a technical context—a complex Merger Agreement. So common reference dictionaries cannot show what the parties thought their term of art would mean in a technical legal context.

AccuLynx’s legal dictionaries offer no more support. AccuLynx cites (Opp’n 17, 19) *Ballentine’s Law Dictionary* and *Barron’s Law Dictionary*, defining “willful” as any act that is not accidental. But neither definition accounts for the law’s longstanding recognition that negligent conduct does not count as willful. *See, e.g., McLaughlin*, 486 U.S. at 133. Indeed, the *Ballentine’s* definition does not even account for the fact that, as AccuLynx concedes (Opp’n 19), willfulness requires knowing conduct in criminal law. So neither definition reflects the law.

AccuLynx also says (Opp’n 18) the “first definition of ‘willful’ in *Black’s Law Dictionary*” supports its position. But that definition explains 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” (which did not occur

here, see Op. 41-42; *infra* pp. 14-15), and that the “term *willful* is stronger than *voluntary* or *intentional*.” *Willful*, *Black’s Law Dictionary* (12th ed. 2024).

AccuLynx’s cases are just as off-base. *Bryan v. United States*, 524 U.S. 184, 191 (1998), explained that “when used in the criminal context, a ‘willful’ act is one undertaken with a ‘bad purpose.’” *Bryan* did not purport to explain what constitutes a willful act in the civil context, much less cast doubt on the U.S. Supreme Court’s pre- and post-*Bryan* cases explaining that in civil contexts, “willful” “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. And *Waller v. State*, 340 A.3d 1133, 2025 WL 1100909, at *4 (Del. Apr. 14, 2025) (TABLE), held that there is “no fundamental difference ... between willful and intentional conduct” when a defendant is charged with failing to follow police instructions since the State must provide evidence that the defendant knowingly “disregard[ed]” the officer’s instructions. *Waller* provides no support for AccuLynx’s contention that any non-accidental conduct is willful in a civil case.

b. AccuLynx next argues (Opp’n 19-21) that “willful” means different things depending on the word it is paired with. AccuLynx and the Court of Chancery claim that “willful” can imply knowing or reckless conduct when paired with a

negative word like “breach” or “misconduct,” but that it “ratchets down” when paired with a “neutral” word like “conduct.” *Id.*; see also Op. 47.

This argument contradicts AccuLynx’s earlier insistence that “willful” never requires any particular mental state in a civil context. But regardless, the argument fails on its own terms. The adjective “willful” modifies the noun it is paired with, not the other way around. No matter whether the noun is “neutral” or negative, willfulness requires conduct that the actor knows or should know will cause a particular consequence. For example, in *Warren*, the U.S. Supreme Court held that the term “wilful act” in a treaty required more than mere “negligence” even though “act” is a neutral term. 340 U.S. at 528-29. Similarly, in *Unified Western Grocers, Inc. v. Twin City Fire Insurance Co.*, 457 F.3d 1106, 1111-12 (9th Cir. 2006), the Ninth Circuit held that a statute providing that “[a]n insurer is not liable for a loss caused by the wilful act of the insured” requires more than “the ‘intentional doing of an act constituting ordinary negligence or the violation of a statute.’”

Accordingly, the word “willful” does not mean something different in Section 9.1 just because that provision uses “willful conduct,” while other parts of the Merger Agreement use willful “misconduct” or “breach.” The different wording reflects only *what* must be “willful”—conduct, misconduct, or a breach—not that “willful” means something different in each provision.

None of AccuLynx’s cases holds that “willful” means volitional when paired with a neutral noun. In *Kawaauhau v. Geiger*, 523 U.S. 57, 61-62 (1998), the Supreme Court held that a provision in the Bankruptcy Code preventing debtors from discharging debts stemming from “willful and malicious injury by the debtor” applies “only” to “acts done with the actual intent to cause injury” because the term “willful ... injury” incorporates common law intentional tort concepts requiring knowing misconduct, and discharge exceptions in the Bankruptcy Code should be construed narrowly. AccuLynx seizes on dicta in the Court’s opinion stating that “[h]ad Congress meant to exempt debts resulting from unintentionally inflicted injuries, it might have described instead ‘willful acts that cause injury.’” *Id.* at 61. But the Court was not construing the term “willful acts”; had it done so, it would have followed its earlier holding in *Warren* that “wilful act” requires a culpable mental state more than mere “negligence.” 340 U.S. at 528-29.

AccuLynx’s remaining cases are even further afield. Michigan criminal law defines “[s]talking” as “a willful course of conduct involving repeated or continuing harassment of another individual.” Mich. Comp. Laws Ann. § 750.411h(e). In *Blake v. County of Livingston*, 257 F. App’x 848, 853 (6th Cir. 2007) (alterations adopted), the Sixth Circuit followed state court decisions holding that defendants do not have to know that their conduct will terrify their victims; it would be absurd to “allow a defendant to continue harassing and contacting the victim without abatement simply

because he genuinely feels that maintaining contact will eventually restore his relationship.” That context-specific decision provides no support for AccuLynx’s argument that “willful” never requires any mental state when paired with a “neutral” noun. And the Court of Chancery’s decisions in *XRI*, 2024 WL 3517630, at *23, and *PJT Holdings, LLC v. Costanzo*, 339 A.3d 1231, 1251 (Del. Ch. 2025), interpreted the term “willful breach,” not any “neutral” nouns.

2. Giving “willful conduct” its ordinary civil-law meaning would not render any part of the Merger Agreement superfluous.

a. AccuLynx argues that the Court should not read the term “willful conduct” according to its ordinary civil law meaning because doing so would render another provision in the Merger Agreement superfluous. Section 9.1(f) disallows termination if Verisk’s “knowing and willful breach of this Agreement has prevented the satisfaction of the [closing] conditions.” Op. 12. AccuLynx claims that interpreting “willful conduct” to require something more than voluntary conduct would render “the ‘willful conduct’ provision ... superfluous because any ‘willful conduct’ that caused the failure of a closing condition would also be a ‘willful breach.’” Opp’n 26-27.

But there are ways that Verisk could have delayed closing without breaching, or willfully breaching, the Merger Agreement under certain scenarios. For example, Section 6.1 requires Verisk to use “commercially reasonable efforts to promptly

obtain any clearance required under the HSR Act,” but specifies that “‘commercially reasonable efforts’ will in no event require” Verisk “to modify existing ... contractual rights,” among other things. A142-43. So if Verisk hypothetically could end the FTC’s HSR review before the Termination Date through a de minimis amendment to a small supplier contract, declining that offer would not breach the Merger Agreement. But if Verisk refused to amend *only* to delay consummation past the Termination Date (which did not occur here), that could constitute “willful conduct” preventing termination. The Court does not need to adopt a strained reading of the word “willful” to give all provisions independent meaning.

b. By contrast, adopting AccuLynx’s interpretation would read the word “willful” out of the contract. It is hard to imagine any realistic scenario where a corporation could do anything to delay a merger closing that was not volitional and uncoerced. So under AccuLynx’s view, the word “willful” in “willful conduct” does nothing. That is exactly the superfluity problem AccuLynx claims it wishes to avoid.

AccuLynx’s response only underscores the problem. AccuLynx claims that the parties could have wanted to exclude a scenario where Mr. Love accidentally “hit send on a draft [email to ServiceTitan] he never intended to transmit.” Opp’n 27-28. But that scenario is fanciful. Ordinary corporate employees do not write termination emails breaking off product negotiations that they do not intend to send. And AccuLynx does not point to anything in the record supporting its implication

that the parties knowingly adopted AccuLynx’s absurd view of this legal term of art. Interpreting “willful” to mean volitional fails to give effect to the language the parties chose when drafting their agreement.

3. Under the correct legal standard, the August 5 ServiceTitan email was not “willful conduct.”

Finally, AccuLynx argues that even if the Court gives “willful conduct” its ordinary civil law meaning, the ServiceTitan email was reckless—and thus willful—because Verisk should have known that sending it “could attract FTC scrutiny during a pending merger review.” Opp’n 30-31. The law and record foreclose that argument.

Under Delaware law, “[r]eckless conduct reflects a knowing disregard of a substantial and unjustifiable risk.” Del. P.J.I. Civ. § 5.9 (2025). “Recklessness occurs when a person ... performs an act so unreasonable and so dangerous that he or she knows, or should know, that harm will probably result.” *Id.* “Where the claim of recklessness is based on an error of judgment ... [i]t must be shown that the precise harm which eventuated must have been reasonably apparent but consciously ignored in the formulation of the judgment.” *Jardel*, 523 A.2d at 531.

Here, AccuLynx points to no evidence that anyone at Verisk consciously disregarded the risk that the August 5 ServiceTitan email would trigger intensive antitrust scrutiny and ultimately delay the merger’s closing. That is because no such evidence exists. To the contrary, the Court of Chancery found that the employees

who sent the email did not believe, even after the FTC's investigation began, that the email was responsive to the FTC's concerns. Op. 41. So once the Court corrects the Court of Chancery's incorrect interpretation of "willful conduct," applying it to the undisputed facts shows that the email does not qualify. Verisk neither knew nor consciously disregarded the risk that the email might delay closing.

AccuLynx invites the Court to ignore the settled meaning of a legal term of art used in countless contracts. The Court should decline that invitation.

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

A. The August 5, 2025, email to ServiceTitan was not the most important cause of the failure to close the merger before the Termination Date.

Section 9.1 does not negate Verisk’s termination right for another reason: The ServiceTitan email was not “the primary cause of” the failure to satisfy a closing condition. Op. 13. The plain meaning of “the primary cause” is the most important cause of a particular result. Br. 32-34. And the Court of Chancery’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. Br. 34-38. AccuLynx’s own witnesses testified that the FTC issued the Second Request—the event that delayed closing—only after speaking with multiple AccuLynx competitors and developing a novel and unsupported theory of competitive harm. *Id.* And the parties’ witnesses were unanimous in testifying that the FTC would not have agreed to the “quick look” agreement on November 4, after Verisk disclosed the email and with full knowledge of its contents, had the FTC not believed it could potentially clear the merger before the Termination Date. *Id.*

B. AccuLynx’s counterarguments lack merit.

AccuLynx does not dispute that to satisfy the Merger Agreement, the August 5 ServiceTitan email had to be the most important cause of the closing delay. Instead, AccuLynx argues (Opp’n 32-33) that the Court of Chancery’s conclusion

that the email was the primary cause of the closing delay is a factual finding subject to clear error review. AccuLynx claims (Opp’n 36-40) that there is adequate evidence showing that the email was the most important cause of the delay, so this Court should defer to the Court of Chancery’s conclusion.

AccuLynx’s arguments miss the mark. The Court of Chancery’s primary cause determination is subject to de novo review. And under any standard of review or set of causation principles, the ServiceTitan email was not the closing delay’s primary cause.

- 1. The Court of Chancery’s primary cause determination is subject to de novo review because the court applied the wrong legal standard and because the material facts and legal standard are undisputed.**

AccuLynx first argues (Opp’n 32-33) that the Court of Chancery’s primary cause determination is subject to clear error review. Not so.

a. To start, the Court of Chancery committed legal error by interpreting the term “the primary cause” to incorporate the tort-law concept of “proximate cause,” rather than applying the term’s ordinary meaning. Br. 37-38. Since the lower court applied the wrong legal standard to the facts, its conclusion is not entitled to deference on review. *See Genencor International, Inc. v. Novo Nordisk A/S*, 766 A.2d 8, 13 (Del. 2000); *Kahn v. Lynch Communication Systems, Inc.*, 669 A.2d 79, 84 (Del. 1995).

AccuLynx's responses are unpersuasive. AccuLynx claims (Opp'n 34) that Verisk invited the Court of Chancery's error by citing the *Black's Law Dictionary* definition of "primary cause" in its pretrial brief, which references proximate cause. That misrepresents the record. In the proceedings below, neither side argued that the term "the primary cause" has a specialized legal meaning or briefed proximate cause principles. Op. 47-48. The tort law framework that the Court of Chancery ultimately applied was entirely of its own invention, not something that Verisk (or even AccuLynx) requested. See Op. 47-50.

AccuLynx also argues (Opp'n 34-36) that the Court of Chancery did treat "the primary cause" as meaning the most important cause. But the court's opinion belies AccuLynx's claim. The court defined "primary cause" by incorporating the concept of "proximate cause," which the court defined as *any* cause that "produces the injury and without which the result would not have occurred," Op. 49—in other words, anything that was necessary for a particular result to occur. But that definition does not work. While there can be multiple events that are necessary for an outcome, the Merger Agreement blocks termination only if a party's willful conduct was "the" single "primary cause" of a closing delay. Op. 13. While the Court of Chancery recognized that the Merger Agreement does not allow for multiple primary causes, Op. 50, nowhere did it recognize that it needed to compare the events that led to the closing delay and pick the most important one.

b. The Court of Chancery’s primary cause determination is also subject to de novo review because it is a mixed question of law and fact and the relevant facts and legal standard are undisputed. As this Court has explained, once the facts and legal standard are determined, a lower court’s application of the law to the facts “is reviewed by appellate courts *de novo*.” *Scharf*, 864 A.2d at 916. Thus, when determining causation, if “the facts are undisputed and the inferences to be drawn from them are plain and not open to doubt by reasonable men, it is the duty of the court to determine the question as a matter of law” subject to de novo review. See *Stucker v. American Stores Corp.*, 171 A. 230, 232 (Del. 1934).

Here, the parties agree that “the primary cause” means “the most important cause.” And Verisk’s challenge to the Court of Chancery’s primary cause determination is based entirely on the court’s own findings and undisputed evidence—mostly the testimony of AccuLynx’s own witnesses. Since the legal standard and material facts are undisputed, the trial court’s primary cause determination should be reviewed de novo. *Id.*

2. The Court of Chancery’s primary cause determination contradicts the record and thus fails under any standard of review.

AccuLynx next argues (Opp’n 36-40) that the record supports the trial court’s conclusion that the August 5 ServiceTitan email was the primary cause of the closing delay. AccuLynx’s arguments fail on multiple levels.

a. i. To start, the record conclusively establishes that (i) the closing delay occurred because the FTC issued and required full compliance with its Second Request; and (ii) the ServiceTitan email was not even the most important cause of the Second Request. Take it from AccuLynx’s own witnesses. AccuLynx’s expert, John Newman, testified that the FTC:

- Did not decide to issue the Second Request until long after it learned about the email;
- Would not have issued it if competitors other than ServiceTitan had not been expressing the same concerns; and
- Would not have entered into a quick look agreement with Verisk on November 4, 2025, if the ServiceTitan email meant that the FTC could not complete its review by the Termination Date.

A806-A807, A813, A831-A832. And both Newman and AccuLynx’s regulatory counsel, Olivier Antoine, testified that even after learning about the ServiceTitan 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, the deadline for the FTC’s initial review. A778-A779, A813. Put differently, the primary cause of the closing delay was not the ServiceTitan email; it was the parties’ inability to quickly assuage the antitrust concerns the FTC developed after speaking with multiple AccuLynx competitors.

ii. AccuLynx’s counterarguments lack merit. AccuLynx first argues that the ServiceTitan email could still be the primary cause of the closing delay “even if

the failure to close was not *inevitable* after August 5.” Opp’n 38 (emphasis in original). But the record does not just show that the closing delay was avoidable after Verisk sent the ServiceTitan email: AccuLynx’s own witnesses testified that the delay *would not have happened at all* if other competitors had not echoed ServiceTitan’s concerns and the parties’ post-email discussions with the FTC had not been as choppy. A778-A779, A806-A807, A813, A831-A832. The email cannot have been the most important cause of the delay if the delay occurred only because of other events. Indeed, the delay would have occurred even if the email had never been sent, because ServiceTitan still would not have gotten its bespoke integration.

AccuLynx also argues (Opp’n 37-38) that the August 5 ServiceTitan email must have been the closing delay’s primary cause because (i) Verisk’s expert, Holly Vedova, agreed that “Verisk’s termination of the more robust integration pricing discussions was more than just important to the FTC’s analysis, but it was the reason why the FTC needed to investigate the transaction”; and (ii) ServiceTitan had multiple touchpoints with the FTC throughout the investigation. But Vedova was never asked about the email and did not concede that the email caused the failure of the condition. The undisputed evidence shows that the *decision* to terminate was made before the Merger Agreement was signed, and she was referring to that decision. A729. But whether she was referring to the underlying decision or the email is irrelevant because the FTC’s “reason” was based solely on its later novel

market reset theory. This is completely consistent with Vedova’s testimony about the actual “primary cause”: the FTC’s novel market reset theory and the “numerous calls with third parties ... supporting the FTC’s theory.” A731; *see also* Br. 35-37.

b. i. The Court of Chancery’s decision was wrong even if the term “the primary cause” incorporates tort-law proximate causation principles. In tort law, an event cannot be a proximate cause of an injury if an unanticipated development “breaks the causal connection between the original tortious conduct and the injury.” *Duphily v. Delaware Electric Cooperative, Inc.*, 662 A.2d 821, 829 (Del. 1995). The FTC’s novel theory and its decision to issue the Second Request were a superseding cause of the closing delay. Nobody disputes that the Second Request is what prevented the merger from closing on time. Additionally, the Second Request was not “anticipated or reasonably foreseeable.” *Id.* As the trial court found, 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. Op. 51-54. And the undisputed record—including testimony from AccuLynx’s own witnesses—establishes that the email did not trigger the Second Request; the FTC issued the Second Request based on complaints from AccuLynx competitors and its novel antitrust theory. *See* Br. 34-37; *supra* pp. 20-22.

ii. AccuLynx’s responses lack merit. AccuLynx claims (Opp’n 40) that the Second Request could not have been a superseding cause of the closing delay

because the Second Request was foreseeably caused by the email. But AccuLynx's own witnesses agreed that the email did not cause the Second Request. Br. 34-37; *supra* pp. 20-22. And the Court of Chancery found that the Second Request was not a foreseeable consequence of sending the email. Op. 51-54. So even if "the primary cause" were synonymous with "a proximate cause," the court erred in failing to recognize that the Second Request was an unforeseeable superseding cause.

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. The Court of Chancery found that Verisk searched nearly 4 million documents, produced 400,000 of them, generated more than 30 pages of detailed responses to the FTC’s inquiries, met with the FTC nearly 30 times, built a special software tool to search its databases for references to AccuLynx’s competitors, hired experienced attorneys, economists, and lobbyists, and spent nearly \$8 million trying to persuade the government to let this deal close. Op. 25, 31-33, 38-39. Those were commercially reasonable efforts. Br. 41-44. The Court of Chancery found that those efforts proved insufficient because “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. But no additional efforts would have “ensure[d]” that “forgetful or confused employees accurately responded to the FTC’s inquiries.” *Id.*

B. AccuLynx claims (Opp’n 41-45) the record shows that Verisk breached its reasonable-efforts obligations. None of AccuLynx’s arguments is persuasive.

1. AccuLynx argues that Verisk breached its reasonable-efforts obligations because “it was foreseeable that sending [the ServiceTitan] email would trigger heightened antitrust scrutiny and delay closing.” Opp’n 42-43. But again, the Court of Chancery repeatedly found that the parties did not expect the merger to

trigger any serious antitrust concerns. Op. 51-54. It found that the employees who sent the email did not believe, even after the FTC's investigation began, that the email was responsive to the FTC's concerns. Op. 41. And AccuLynx's own witnesses testified that it was not the email itself that caused the closing delay, but the parties' interactions with the FTC during its investigation. *See* Br. 34-37; *supra* pp. 20-22. Simply repeating that Verisk should have known the email would delay closing does not make it so.

2. AccuLynx also says (Opp'n 43-45) Verisk breached its reasonable-efforts obligations because it did not initially disclose its discussions with ServiceTitan to the FTC and it did not try hard enough to find the email. But the trial court repeatedly found that Verisk *did* engage in robust efforts to locate information responsive to the FTC's concerns. Op. 25, 31-33, 38-39. Those efforts did not identify the email because the employees who knew about it either forgot it or did not understand that it might be responsive to the FTC's inquiry, especially since Verisk and ServiceTitan had just concluded a successful standard integration. Op. 24-26, 41-42. While that outcome was frustrating, a commercially reasonable efforts clause is not a guarantee that a party's efforts will be successful. *See 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). The Court should hold that Verisk did not breach Section 6.1 of the Merger Agreement.

CONCLUSION

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

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