

Contractual Remedies in Mergers

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This paper investigates the impact of a recent Delaware corporate law decision that restricted a merger target's ability to recover damages from a breaching buyer. First, we provide a theoretical analysis to generate empirical predictions. Second, we show that the decision led to a decrease in both target and joint values in mergers governed by Delaware law. Third, we hand-collect relevant provisions from merger agreements and find that deals governed by Delaware law responded by including more targetfriendly non-price terms after the decision. We also provide evidence suggesting that transactions governed by Delaware law that adopted such non-price contract terms experienced a relative decrease in deal price. Overall, the paper demonstrates the importance of remedy provisions in merger contracting and shows how contracting parties respond to an exogenous change in deals jurisprudence.

Keywords:

JEL Classification: D22, G34, K12, K22, L14

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1. Introduction

What remedy should a target be entitled to receive from a breaching buyer in a merger transaction? This seemingly straightforward question has vexed M&A practitioners and judges over the years. In transactions involving a public company target, the buyer typically commits to paying merger consideration directly to the target shareholders (and not the target), usually at a premium above the pre-announcement target stock price. Yet, as is typical in a triangular merger, the merger agreement is executed among the buyer, the target, and the buyer's wholly owned merger subsidiary, excluding the target shareholders from being direct parties to the agreement. These agreements often also expressly stipulate that the target shareholders are not recognized as third-party beneficiaries of the agreement.

This transactional structure creates puzzling questions of who has suffered harm and what remedies are available when the buyer breaches the merger agreement and the merger fails to close. While the target shareholders lose the promised merger consideration from the buyer, this loss does not appear to constitute direct harm to the target itself, which retains its assets and operations ostensibly unchanged before and after the breach of the merger. At the same time, because the target shareholders are expressly denied a third-party beneficiary status, they generally lack standing to pursue a direct legal claim against the buyer, despite having lost out on the merger premium. To deal with this structural and contractual conundrum, M&A practitioners have included “Con Ed” provisions in merger agreements. One such Con Ed provision is a “lost premium” damages provision, which contractually allows the target to collect the lost premium from a breaching buyer.

In *Crispo v. Musk*,¹ however, the Delaware Chancery Court held that lost premium damages provisions are unenforceable. The court reasoned that the target company suffers little direct harm from the buyer's breach, and allowing the target to collect the “lost premium” from the breaching

¹ 304 A.3d 567 (Del. Ch. 2023).

buyer violates contract law's anti-penalty doctrine. Given that Delaware law governs most major deals, the *Crispo* decision represents a significant shift in M&A jurisprudence.

The *Crispo* decision took market participants by surprise, as dealmakers had long assumed the enforceability of lost premium damages provisions. In response to the decision, on March 28, 2024, the Delaware State Bar Association's Corporation Law Council proposed to amend the Delaware General Corporation Law ("DGCL") to expressly allow the parties to include a lost premium provision in a merger agreement. The proposed amendment also permitted the designation of the target corporation as a "representative" of the target shareholders in the merger agreement for purposes of collecting the stipulated damages, effective upon shareholders' adoption of the agreement (Richards, Layton & Finger 2024). The legislature enacted the amendment, which became effective on August 1, 2024.

This paper analyzes the economic and contractual impact of the *Crispo* decision. First, following a brief overview of the relevant literature, the paper engages in hypothesis development with a stylized theoretical model to assess the impact of denying a target the ability to collect the merger premium from a breaching buyer. The model offers several empirical predictions. First, holding everything else constant, it predicts that disallowing monetary damages will generally be harmful to a target that has already signed a merger agreement. Second, it also predicts that disallowing the target from recovering any damages from a breaching buyer can lead to possibly too many breaches (i.e., inefficient breaches), reducing the overall expected surplus from the transaction.

Another implication of the theoretical analysis is that the *Crispo* decision can incentivize transacting parties to adopt a contractual "fix" to better realize the transactional surplus and to prevent inefficient breaches. Furthermore, absent such a contractual fix for the buyer's breach, transactions with a relatively small surplus may not move forward, as the risks of buyer breaches would outweigh the potential gains. This can potentially increase average merger premia because only deals with

sufficiently high surplus will be expected to close. Conversely, if the transacting parties can “neutralize” the impact of the *Crispo* decision through a contractual fix, the premium would be lower than in deals without such a provision, because even buyers with lower valuations would be more likely to close the transaction rather than breach, pushing down the average expected buyer valuation and the deal price.

With respect to the contractual fix, the potential inefficiencies from denying targets (and their shareholders) any meaningful remedy suggest that deal lawyers would respond to the Chancery Court’s decision by crafting an alternative contractual solution. In dicta, the *Crispo* decision reviewed the two other types of Con Ed provisions, without holding them unenforceable: (1) granting shareholders third-party beneficiary status and authorizing the target company to recover lost premium, and (2) designating the target as its shareholders’ agent to recover lost premium. One possible “solution,” therefore, would be to recognize the target shareholders as third-party beneficiaries while giving the target the exclusive right to sue the breaching buyer, possibly in its capacity as the shareholders’ agent.

In sum, the theoretical model predicts that the reactions to the *Crispo* decision could emerge through two channels: (1) a decrease in firm value (especially for the target) in deals that were open (i.e., signed before the decision but not closed) at the time of *Crispo*, and (2) changes in non-price terms or price terms (deal premia) in deals that were signed after the decision.

Second, following up on the hypothesis development, the paper examines the stock market reactions to the *Crispo* decision to assess whether the decision had any meaningful impact on merger transactions. At the time of the decision, there were 49 pending transactions involving public targets for which we have access to relevant data. Among them, 35 were governed by Delaware law and 14 were governed by non-Delaware law. We restrict the event study to these transactions, all of which were signed before the decision; their price reactions to *Crispo* are likely to reflect the value implications of the decision without being confounded by parties selecting into different deals or changes to

contracting practices after *Crispo*. This approach is analogous to [Hubbard \(2013\)](#), who controls for selection in evaluating the effect of a new legal standard by limiting his data to cases filed before the new standard took effect.

Using the event study methodology, we find that, for transactions governed by Delaware law, there was a statistically significant negative abnormal return for target stock prices across multiple event windows around the decision date. A difference-in-differences analysis shows that Delaware targets had significantly lower abnormal returns relative to targets in open mergers governed by non-Delaware laws. Furthermore, the event study analysis of value-weighted portfolios of both the buyers and the targets shows that the Delaware deals experienced a negative abnormal joint return in the relevant windows. These findings suggest that the *Crispo* decision was a negative shock to Delaware targets and had a meaningful economic impact on affected mergers. The decrease in joint value of targets and buyers further indicates that the *Crispo* decision was welfare-reducing.

Third, we manually collect relevant provisions from publicly announced and filed merger agreements to determine whether contracting practice has been shaped by the *Crispo* decision. In the aftermath of *Crispo*, as mentioned earlier, practitioners have suggested a few possibilities for restoring the ability of the target to recover the promised premium from a breaching buyer. We analyze 232 merger agreements spanning from one year before *Crispo* to one year after (i.e., dated between October 31, 2022, and October 31, 2024). Of these, 121 agreements were signed before *Crispo*, while 111 were signed after *Crispo* (45 were entered into before the proposed DGCL amendment, and 66 were agreed to after the amendment proposal).

Our analysis of the contract terms reveals that, with the Chancery Court rejecting the enforceability of lost premium provisions, contractual fixes became significantly more common in agreements governed by Delaware law. Specifically, we observe an increase in provisions that (1) grant target shareholders narrow third-party beneficiary status, but then grant the target company the

exclusive right to collect damages on behalf of its shareholders; and (2) explicitly designate the target company as its shareholders' "agent" to recover the lost merger premia.² While both types of provisions existed before *Crispo*, they became far more common after the decision, appearing in about half of post-*Crispo* agreements. This increase in occurrence was especially pronounced for Delaware deals, supporting the hypothesis that transactional lawyers seem to be actively responding to the decision. We have also consulted with a number of transactional lawyers, who verified that *Crispo* and the legislative proposals in response to the decision had a tangible effect on contracting practices.

Fourth, with respect to price terms (deal premia), we find that, after *Crispo*, Delaware deals with a contractual fix had a relatively lower premium than Delaware deals without such terms. This is consistent with the theoretical prediction that a contractual fix will lead to a lower merger premium, because an enforceable damages provision reduces the likelihood of the buyer's breach, forcing even buyers with lower valuations to close the transaction, which lowers the average expected buyer valuation and the deal price. We acknowledge the fact that both price and non-price terms of a merger agreement are being determined simultaneously, and this leads us to caution against reading too much into the results on merger premia. The overall results, however, indicate that transactional parties seem to have responded fairly robustly to *Crispo* by changing non-price terms, and that Delaware deals with these terms have relatively lower premia than Delaware deals without such contractual provisions.

The paper is organized as follows. Section 2 provides a brief overview of the relevant literature. Section 3 presents a stylized model to develop testable hypotheses. Section 4 explains our data collection process and presents summary statistics. Section 5 presents the results of an event study showing that the *Crispo* decision decreased value for firms most directly affected: targets in mergers governed by Delaware law and announced (but not completed or canceled) as of the decision date. It

² The explicit agency designation provision may be seen as a variant of the first (and always appears in conjunction with the first type of provision), but is more controversial from a doctrinal perspective, as explained in the legal background in the Online Appendix.

also shows that the joint values of targets and buyers in Delaware deals decreased in response to the decision. Section 6 analyzes how the *Crispo* decision affected deal completion risk, contractual terms, and price terms. The section also presents results from additional robustness tests, including analysis based on the *Con Ed* decision and tests addressing possible selection issues before and after the *Crispo* decision. Section 7 discusses implications from the study and concludes with suggestions for future research.

2. A Brief Overview of Related Literature

This paper builds on a few important lines of scholarship. First, a number of scholars have examined the impact of changes in case law or regulation on firm value using event studies. Previous papers have documented significant changes to firm value caused by court decisions on corporate bylaws (Aggarwal, Choi, and Eldar 2020; Dammann 2022), a jury verdict against a breaching buyer in a merger (Cutler and Summers 1988), and the court's grant of specific performance against a merger acquirer (Listokin 2005).

Another important line of literature has examined the impact of M&A law changes. Papers have examined the impact of state anti-takeover statutes on firm performance (Giroud and Mueller 2010), labor wages (Bertrand and Mullainathan 1999), managerial stock ownership (Cheng, Nagar, and Rajan 2005), and capital structure (John and Litov 2010). Others have looked more specifically at how transacting parties' behavior changes in response to changes in M&A law, such as the prohibition of deal protection devices (Restrepo and Subramanian 2017), crackdowns on frivolous merger lawsuits (Cain, Fisch, Davidoff Solomon, and Thomas 2018), and decreases in appraisal rights (Boone, Broughman, and Macias 2019).³

³ There also is scholarship that examines how M&A activity is affected by changes in other laws, such as tax law (Choi, Curtis, and Hayashi 2019), executive compensation (Choi, Lund, and Schonlau 2020), and fairness opinions (Badawi, Cain, and Solomon 2023).

A smaller number of studies have examined how corporate contracts respond to changes in law, such as the validation of exclusive forum provisions (Romano and Sanga 2017) and changes to directors' indemnification rights (Barzuza and Curtis 2017). Interestingly, some of the studies examining changes in commercial contracts in response to a change in case law have found that even sophisticated commercial parties do not respond to a legal shock, including in the sovereign debt and bond contract contexts (Choi, Gulati, and Scott 2018a and 2018b, Kahan and Gulati 2021). Given that some prior empirical work shows little or no response from sophisticated parties to changes in law, it is ex-ante unclear whether and how contracting M&A parties would respond to *Crispo*.

3. A Simple Model

In this section, we present a simplified theoretical model to examine the impact of making it more difficult for a target company to recover lost premia (or other damages) from a breaching buyer.⁴ The model will generate hypotheses for empirical tests. The basic idea is that, without a remedy against a breaching buyer, the buyer becomes more likely to breach the contract when the merger becomes unattractive, especially when the surplus from the transaction is small. This implies that, without a remedy, surplus from the transaction must be sufficiently large for the buyer to consummate the transaction, and the lack of liability will push up the transaction price. Conversely, with damages for breach, the buyer becomes compelled to close the transaction even when the surplus is small. This lowers the expected surplus from the transaction and pushes down the transaction price.

Furthermore, because the lack of liability creates inefficiency, the parties will have an incentive to create contractual solutions to *Crispo*, and if the parties can get around the *Crispo* issue, the effect of the decision can be neutralized. In particular, if the parties can contractually counteract the impact of *Crispo*, or if the injured target can more readily secure specific performance as a remedy after the

⁴ There is a theoretical literature that examines the impact of damages for contract breach on contracting party's decision to breach, make reliance investment, deterring third party entry, etc. (Rogerson 1984, Shavell 1984, Spier and Whinston 1995), and this stylized theory builds on that literature.

decision, the predicted increase in merger premium will dissipate or disappear. The model predicts that, for deals executed after *Crispo*, the premium will be relatively lower for transactions where non-price terms became more pro-target as compared to transactions lacking such contractual adaptations to the Chancery Court decision.

Here is a simple theoretical scenario. Suppose we have two transacting parties: one buyer and one seller (target). The target is a publicly traded company, and the target and the buyer are utilizing a triangular merger structure, under which the target shareholders will receive the consideration directly from the buyer. Suppose the target shareholders' reservation value is fixed at $c > 0$.⁵ The buyer's reservation value (v) for the target is initially uncertain and is distributed on $[\underline{v}, \bar{v}]$, with the probability density function of $f(\cdot)$ and the cumulative density function of $F(\cdot)$. We assume that $\underline{v} < c < \bar{v}$ and $E(v) > c$. In terms of timing, at $t = 1$, the parties enter into a merger agreement with the (aggregate) consideration of p to be paid to the target shareholders.⁶ At the negotiation stage, the target receives $\delta \in [0,1]$ fraction of the expected transactional surplus.⁷ At $t = 2$, the buyer's valuation (v) realizes; at $t = 3$, the buyer decides whether to consummate the transaction or breach; and at $t = 4$, the target pursues remedy (if any). For simplicity, there is no time discounting and, for now, we will focus on monetary damages as a remedy. Contractual fixes to *Crispo* and specific performance will be discussed later.

⁵ This assumption is made for simplicity. We can allow the target's reservation value to vary, but the main analysis will carry through, with some additional complications.

⁶ Using the aggregate consideration measure simplifies the analysis. If there are n number of target shares outstanding, the per-share consideration will simply be p/n . Also, while it is natural to assume that the parties are choosing both the price (p) and damages (d) at $t = 1$, for the ease of exposition, we will, for now, assume that the damages are set by the legal system. We will occasionally refer to the possibility of parties' choosing the damages.

⁷ Although not explicitly modeled, there are at least two ways of motivating δ . For one, we can adopt a [Rubinstein \(1982\)](#) style alternating offer game and the relative patience of the seller vis-à-vis the buyer will determine δ . A simpler version of this model is to have a random-offeror model, where the seller (buyer) gets to make a take-it-or-leave-it offer with probability δ ($1 - \delta$). For another, we can adopt an auction approach, where $n \geq 1$ buyers compete for the seller in a pre-determined auction setting. For instance, if we assume a private value setting (where the buyers' valuations are weakly affiliated) with an ascending auction setting, as n increases, the winning buyer's expected profit (weakly) decreases (i.e., δ increases as n increases). See [Krishna \(2003: chapter 2\)](#).

Suppose that if the buyer were to breach and walk away from the transaction, the buyer must pay damages of $d \geq 0$ to the target, where $d \in [0, p - c]$. With these damages, the buyer will breach if $-d > v - p \Leftrightarrow p - d > v$. This implies that the probability of completing the transaction is $(1 - F(p - d))$, and from the ex ante perspective, the expected surplus (W) is given by:

$$\begin{aligned} E(W) &= E(v - c | v \geq p - d) = (1 - F(p - d)) \int_{v=p-d}^{\bar{v}} (v - c) \frac{f(v)}{1 - F(p - d)} dv \\ &= \int_{v=p-d}^{\bar{v}} (v - c) f(v) dv. \end{aligned}$$

The seller's and the buyer's expected profits, respectively, are:

$$E(\pi_b) = \int_{v=p-d}^{\bar{v}} (v - p) f(v) dv - \int_{v=\underline{v}}^{p-d} df(v) dv = \int_{v=p-d}^{\bar{v}} (v - p) f(v) dv - F(p - d)d,$$

and

$$E(\pi_s) = \int_{v=p-d}^{\bar{v}} (p - c) f(v) dv + \int_{v=\underline{v}}^{p-d} df(v) dv = (1 - F(p - d))(p - c) + F(p - d)d.$$

Here are a few important points from the setup. First, when we differentiate $E(W)$ with respect to d , we get: $\frac{\partial E(W)}{\partial d} = (p - c - d)f(p - d)$. The right-hand side is strictly positive when $d < p - c$ and is equal to zero when $d = p - c$.⁸ That is, the expected transactional surplus is maximized with expectation damages. Also, when we differentiate respective expected profit functions with respect to d , we get: $\frac{\partial E(\pi_b)}{\partial d} = -F(p - d) < 0$ and $\frac{\partial E(\pi_s)}{\partial d} = (p - c - d)f(p - d) + F(p - d) > 0$. Note that, conditional on p and $d < p - c$, as damages increase, the buyer's profit strictly decreases while the seller's profit strictly increases, and the increase in the seller's profit is larger than the decrease

⁸ The second order condition is also satisfied so long as $f''(\cdot)$ is not "too negative."

in the buyer's profit.⁹ This tells us that, in order to maintain the same division of surplus, the equilibrium price must decrease.

In order to get a better understanding of the impact of damages on equilibrium price, we make one regularity assumption. When we differentiate $E(\pi_s)$ with respect to p , we get: $\frac{\partial E(\pi_s)}{\partial p} =$

$$(1 - F(p - d)) - f(p - d)(p - c) + d \cdot f(p - d) = (1 - F(p - d)) - f(p - d)(p - c - d).$$

We assume that:

$$(1 - F(p - d)) - f(p - d)(p - c - d) > 0 \quad \forall p \in [c, \bar{v}].$$

This assumption is equivalent to $\frac{1}{p-d-c} > \frac{f(p-d)}{1-F(p-d)}$, i.e., the hazard rate is not too big.¹⁰ Given that

$p - d \in [c, \bar{v}]$, if $\frac{1}{\bar{v}-c} > \frac{f(v)}{1-F(v)}$ in the relevant parameter range, the condition is satisfied. The

assumption ensures that when the merger price goes up, the target's expected profit also rises, which is reasonable.¹¹

When the parties enter into the merger agreement at $t = 1$, (p, d) will satisfy: $E(\pi_s) = \delta E(W)$, which becomes:

$$(1 - F(p - d))(p - c) + F(p - d)d = \delta \cdot \int_{v=p-d}^{\bar{v}} (v - c)f(v)dv.$$

⁹ The reason why the seller's profit increase is larger than the buyer's profit decrease from a marginal increase in damages when $d < p - c$ is that, because the damages are too small and there are too many breaches, a marginal increase in damages will also increase the expected welfare. When $d = p - c$, on the other hand, we see that $\left| \frac{\partial \pi_b}{\partial d} \right| = \left| \frac{\partial \pi_s}{\partial d} \right|$.

¹⁰ The assumption ensures that the density doesn't get too high and/or there is sufficiently large support on v . The assumption can be satisfied by a number of distributions: (1) any exponential distribution (which has a constant hazard rate) with a relatively low hazard rate (i.e., the peak density is relatively low); (2) any uniform distribution with a relatively large support; and (3) any normal distribution with a relatively large support. In the case of (2) and (3), we need $\bar{v}$ to be sufficiently large.

¹¹ The reason why this regularity condition is helpful and necessary is that when the deal price goes up, this will increase the chances of deal not closing (when $v < p - d$) and that could have a perverse effect of decreasing the target's expected return. The condition ensures that the latter effect isn't too strong compared to the effect of increasing the consideration for the target, so that a marginal increase in p will increase the expected profit for the seller.

If we treat d as given, this equality implicitly defines p as a function of d (among other variables). In order to get the relationship between p and d , we rely on the implicit function theorem and totally differentiate the equation.¹² When we do so, after some algebra, we get:

$$\begin{aligned} p'(d)\{(1 - F(p - d)) - (1 - \delta)(p - d - c)f(p - d)\} \\ = -F(p - d) - (1 - \delta)(p - d - c)f(p - d). \end{aligned}$$

The right-hand side of the equation is negative. When we examine the terms within curly brackets on the left-hand side, we see that $(1 - F(p - d)) - (1 - \delta)(p - d - c)f(p - d) < 0$ if

$$\frac{f(p - d)}{1 - F(p - d)} < \frac{1}{(1 - \delta)(p - d - c)}.$$

Given that $(1 - \delta)(p - d - c) = p - d - c$ when $\delta = 0$ and $\delta \in [0, 1]$, $\frac{1}{(1 - \delta)(p - d - c)} \geq \frac{1}{p - d - c}$.

With the regularity assumption given above, therefore, we get $\frac{f(p - d)}{1 - F(p - d)} < \frac{1}{(1 - \delta)(p - d - c)}$, and

$$p'(d) = \frac{-F(p - d) - (1 - \delta)(p - d - c)f(p - d)}{(1 - F(p - d)) - (1 - \delta)(p - d - c)f(p - d)} < 0.$$

In other words, as damages increase, the merger price falls. Although the mathematical analysis is fairly involved, the main reasoning is fairly straightforward. As damages increase, the parties expect to close the transaction even when the surplus from the transaction is relatively small (but positive), and this leads to a lower expected valuation by the buyer and to a lower transaction price.

The stylized, theoretical model renders a few predictions. First is the impact and the significance of the *Crispo* decision on the target, the buyer, and the joint surplus. For instance, with respect to those transactions that are pending at the time of the decision, if, due to the *Crispo* decision, the target shareholders became less likely to be fully compensated for the buyer's breach, the decision

¹² The reason for this complication is that, unlike many other scenarios, in this setting the price term (p) (along with damages) is serving two simultaneous functions: dividing up the surplus between the parties and affecting the size of the surplus (by affecting the buyer's breach decision).

will have a negative impact on the value of the target. Furthermore, whether the decision will have a positive effect on the buyers depends, in part, on the chances of the target receiving specific performance as a remedy. Although the decision seems to be generally favorable to the buyers, if the likelihood of receiving a specific performance remedy increases, for instance, the decision can have a negative effect on the buyers. Overall, however, the decision is likely to lead to a decrease in joint surplus due to an increase in inefficient breaches (when $v > c$) and a possible increase in granting of specific performance as remedy (which is inefficient when $c < v$).¹³

Second, the model shows that, after the *Crispo* decision, without any remedies, because the buyer no longer needs to worry about having to pay damages and the parties expect the low-surplus transaction to not close, the expected transactional premium will be higher. On the other hand, if the transacting parties can contractually address the problem raised by *Crispo* by successfully crafting a damages provision against the buyer, this will push the expected premium downwards, because even buyers with lower valuations will close the transaction. From the joint surplus perspective, given that the impact of the decision is to create too many inefficient breaches (when $v > c$) or the court granting specific performance too often (even when $v < c$), both of which are inefficient, the decision creates an incentive for the transacting parties to contractually deal with the shrinking transactional surplus. Finally, although not expressly discussed, if, for instance, $c < p < \underline{v}$ in equilibrium, such that the buyer always has an incentive to close the transaction, the parties will not have an incentive to include a non-price contractual response to *Crispo*.

¹³ The fact that the *Crispo* decision can have a negative effect on the deal surplus can also incentivize the parties to renegotiate the contract (for the deals that are open). Possible renegotiation, however, depends on (1) whether by the time of *Crispo*, the buyer's valuation has realized and (2) if realized, whether both parties observe the realization (i.e., whether the parties are symmetrically informed). If the valuation has realized and is observed by both parties, it is easy to show that they will not renegotiate over damages but will rather renegotiate on the deal price (if necessary) so as to close the transaction that generates a positive surplus. If the parties are not symmetrically informed of the realized valuation, however, this can lead to renegotiation (and deal) failure. If the valuation has not realized, however, they will have an incentive to renegotiate on both the damages and the deal price, so as to increase the expected surplus of the transaction.

While either specific performance or contractual “fixes” can theoretically counteract the effects of *Crispo*, we believe that the latter is the more likely response to the Chancery Court decision in practice. This is because the common law has traditionally favored damages rather than specific performance as the appropriate remedy for contractual breaches (Holmes 1897, Kronman 1978). Consistent with this common law benchmark, Delaware courts have not been entirely willing to grant specific performance remedies to sellers in deal litigation (Jenner and Block 2016, Listokin 2005). While specific performance may theoretically be equivalent to contractual responses to *Crispo*, the possibility of not receiving a judicial grant of specific performance in practice implies that the Chancery Court decision’s impact will be primarily felt through contractual changes to merger agreements.¹⁴ Overall, the model opens the possibility of empirically examining the changes, if any, in the contracting practice before and after the decision. The model also predicts a possible deal price response to the decision and to an inclusion (or exclusion) of a non-price response. Online Appendix Figure OA1 visualizes how changes in contractual remedies could affect the probability of closing transactions governed by Delaware law.

4. Data and Summary Statistics

We collect subscription and hand-collected data from a range of sources. First, we obtain information about stock prices from the Center for Research in Security Prices (CRSP). Second, we collect information about public company merger transactions from FactSet. We restrict the sample to targets headquartered in the United States, with a transaction value of at least \$100 million, traded on the New York Stock Exchange, NASDAQ, or American Stock Exchange, and with consideration of at least \$5 per share (Cain et al. 2018). We gather this information for mergers announced between October 31, 2022 (one year before the *Crispo* decision) and October 31, 2024 (one year after the *Crispo*

¹⁴ Furthermore, while the target may be indifferent between receiving specific performance and full expectation damages for buyer’s breach, specific performance can lead to a reduction in transactional surplus when $v < c$ and the remedy is granted. Hence, the parties will generally prefer to have monetary damages as remedy over specific performance.

decision). Also from FactSet, we collect information about transaction size, target profitability multiple (proxied by the ratio of enterprise value (EV) to earnings before interest, tax, depreciation, and amortization (EBITDA)), indicators for whether the deal consideration was all cash, or if it was a diversifying merger (i.e., the target and acquirer do not belong to the same industry), and information on target and buyer law firms. Third, we collect data on whether each law firm is among the top 25 law firms, in terms of total deal values it represented in the years of 2023 and 2024. This data comes from the Global Mergers and Acquisitions Review published by LSEG (“London Stock Exchange Group”) Data & Analytics.

Finally, we collect merger agreements from the SEC’s Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) and hand-code relevant provisions from the agreements. Two important provisions we looked for are: (1) whether the agreement grants target shareholders narrow third-party beneficiary status for the purpose of recovering lost premia and then expressly gives the target corporation the exclusive right to sue on behalf of its shareholders to recover this lost premium; and (2) whether the agreement designates the target corporation as an “agent” or “representative” of its shareholders (in pursuing the remedy). Of the 272 deals in FactSet, we were unable to locate the agreements for 40 deals, leaving us with 232 deals with full agreements. Table 1 defines all variables used in the paper’s analysis, while Table 2 presents summary statistics of the deals that are used in the event study and the empirical analysis of the agreement terms.

5. Stock Market Reaction to *Crispo v. Musk*

As discussed in the theoretical background section, the direction and magnitude of the economic effect of the *Crispo* decision are not immediately obvious. On the one hand, holding other remedies (including specific performance) fixed, the weakening of Con Ed provisions would make it more likely that acquirers will breach the agreements and frustrate target shareholders’ expectations. This view should translate to *Crispo* decreasing the firm value for merger targets.

A competing perspective is that *Crispo* could have led to null (or even positive) effect on target value because the target company could still seek specific performance after the decision. Since target shareholders can still receive the promised merger consideration if specific performance were granted, *Crispo* may have had no economically significant effect on firm value. Targets' new reliance on specific performance may even *increase* firm value, since there is some evidence that specific performance remedies are accompanied by positive market reactions ([Listokin 2005](#)).¹⁵ Such a specific performance-driven increase in target firm value may be unlikely, because courts have historically not been willing to grant specific performance to targets in deal litigation, as discussed at the end of section 3.

A more likely scenario where *Crispo* may have had a null effect is that the Chancery Court's decision did not explicitly invalidate the other two surviving Con Ed provisions described earlier (granting shareholders third party beneficiary status and agency designation for the target) and the transacting parties could have quickly responded by adopting these provisions as contractual fixes in post-*Crispo* deals, as we see in the next section. However, it was unclear whether the other Con Ed provisions could be a feasible solution. As explained in the Online Appendix, the *Crispo* decision suggested that target firms could not unilaterally appoint themselves as shareholders' agents to recover lost premia. It also was unclear whether buyers would tolerate any granting of third-party beneficiary status for target shareholders, for fear of attracting merger litigation. Target firms may also not want third-party beneficiary status for their shareholders, because they would want to litigate against the buyer in case of breach, rather than entrusting control over litigation to attorneys representing individual shareholders. Finally, for any open deals, given that all the material terms, including financial terms, have been "fixed," introducing a new damages term would likely have triggered a "zero-sum"

¹⁵ We do not view this possibility as being very likely, since few other studies have found similar evidence supporting specific performance as a value-maximizing alternative to damages.

bargaining between the transacting parties, lowering the prospect of successfully adopting a contractual fix.

To ascertain the price effect of the *Crispo* decision, we use the event study methodology. We first examine the stock price movements of firms most affected by the decision: targets in mergers with Delaware governing law, for deals whose agreements had been finalized before *Crispo*, but not yet completed (or cancelled) as of the decision date. The sample of Delaware merger targets consists of 35 merger targets (out of 49 merger targets in the event study sample). This sample size is adequate to run a conventional event study, so long as *Crispo* had a large enough economic effect (MacKinlay 1997, 31). As explained in the introduction, we restrict the event study sample to mergers whose agreements had been signed before *Crispo* (but were still open at the time of the decision), because they are unlikely to be confounded by the self-selection of deals or changes to contracting practices after the decision. This is analogous to Hubbard (2013), who evaluates the effect of a change in pleading standards, and controls for the selection of disputes into filed cases by only including cases filed on or before the date the pleading standard was changed.

We use the standard Fama-French three-factor asset pricing model (Kothari and Warner 2007), which estimates a firm's stock return as:

$$R_{it} = \alpha_{it} + \beta_{mt}R_{mt} + \beta_{SMB}R_{SMB} + \beta_{HML}R_{HML} + \varepsilon_{it}.$$

Here, R_{it} is the return on stock i on date t minus the risk-free rate; R_{mt} is the market return on date t minus the risk-free rate; R_{SMB} is the return on a portfolio of small companies; and R_{HML} is the book to market factor which is the portfolio of firms with a high book value to market value ratio. The abnormal return that can be traced to the event is the actual return minus the expected return:

$$AR_{it} = R_{it} - \hat{\alpha}_i - \hat{\beta}_{mt}R_{mt} - \hat{\beta}_{HML}R_{HML} - \hat{\beta}_{SMB}R_{SMB}.$$

We calculate the abnormal returns for various event windows around the date of the *Crispo* decision (October 31st, 2023). To calculate the expected return $\hat{R}_{it}$, we use a 255-day estimation window that

ends 46 trading days before *Crispo*, and require that each firm have data for at least 40 trading dates during the estimation window (Child et al. 2021). Our variable of interest is the cumulative abnormal return (CAR), defined as the sum of abnormal returns for each day in the event window.

Panel A of Table 3 presents the cumulative abnormal returns associated with different event windows for targets in Delaware deals. In column (1), we find that the average abnormal returns for day 0 is -0.436 percentage points, which is statistically significant at the 95% level. The results for longer event windows around day 0 are larger and more statistically significant. The CARs associated with event windows [0,1], [0,2], [-1,1], and [-2, 2] are -0.699, -2.273, -1.302, and -2.577 percentage points respectively, all being statistically significant at the 99% level. Over the longer [0,5] event window, we find an even greater drop in firm value, of 3.735 percentage points, again significant at the 99% level.¹⁶ *Crispo* hence seems to have had a lasting impact on the firm value of targets in Delaware deals. In untabulated results, we do *not* find significant abnormal returns for event windows after the decision that do not include the date *Crispo* was announced, such as [3,7]. Similarly, in column (7) of Panel A, we present the CAR for a placebo event window [-7, -3] pre-dating *Crispo*, and it is statistically insignificant. The results suggest that *Crispo* led to a loss in value for affected firms. Moreover, the restriction of the effect to event windows that include day 0 suggests that the destruction of firm value was driven by the Chancery Court's decision.

Figure 1 graphs the 95% confidence intervals for the cumulative abnormal returns after *Crispo*, over the [0,5] period. Day "0" in this figure refers to October 31, 2023. There is a steady decrease in the value of these target companies as the window progresses, indicating that the decision had a value-destroying impact on affected transactions. Online Appendix Figure OA2 presents the daily abnormal

¹⁶ In unreported results, we find a -6.624 percentage CAR ($p < 0.01$) over the [0,10] event window, reinforcing that *Crispo* had a long-lasting effect on target value. However, this event window may be considered unduly long, and could be contaminated by events occurring after *Crispo*. Dammann (2022), for instance, uses [0,2] as the longest event window when considering the effect of a Delaware court decision. Therefore, we do not report the results for the [0,10] event window.

returns for targets in Delaware deals open at the time of *Crispo* before and after the decision, over the $[-7, 7]$ window. The targets exhibit smaller abnormal returns between event days -1 and $+3$ around the *Crispo* decision. The abnormal returns before and after these days (i.e., between -7 and -2 and between $+4$ and $+7$) do not have any discernible patterns. Thus, the value destruction seems to be attributable to the Chancery Court decision. The greatest price drops seem to be on days $+2$ and $+3$, possibly because the market took a few days to internalize the doctrinal implications of *Crispo*. The abnormal return for day 0 itself is negative and statistically significant at the 95% level.¹⁷

To further examine the hypothesis that the *Crispo* decision had an economically significant effect, we conduct a difference-in-differences analysis, once again using the CARs around different event windows as the dependent variable. The control group consists of 14 targets in deals that did *not* choose Delaware as the governing law and were announced (but not completed or canceled) before the *Crispo* decision. We expect *Crispo* to primarily affect merger agreements governed by Delaware law, since the *Crispo* decision was a novel articulation of Delaware law. However, we acknowledge the possibility that *Crispo* could affect the expected judicial treatment of contractual clauses in mergers governed by non-Delaware law, since the decision was based on blackletter contract doctrine, which could be relevant to other state courts' interpretation of Con Ed provisions.

Panel B of Table 3 presents the results of the difference-in-differences analysis, displaying the coefficient for the indicator variable equaling 1 for Delaware choice of law. We cluster the standard errors in this difference-in-differences regression at the treatment level, i.e., at governing law (Abadie et al. 2023). The coefficient for Delaware choice of law is negative but not significant at traditional levels for the event windows $[0]$ and $[0, 1]$. However, it is both negative and statistically significant for the longer event windows: $[0, 2]$, $[-1, 1]$, $[-2, 2]$, and $[0, 5]$. The coefficient is not significant for the

¹⁷ We acknowledge that abnormal returns rebounded 4–7 days after *Crispo*, but believe this would be consistent with our claim that the price effect we show in Table 3 reflects the impact of the case, since any price movement should theoretically be priced in within a few days of the Chancery Court's opinion.

placebo event window [-7, -3]. The results in Panel B of Table 3 are consistent with the thesis that *Crispo* had an economically significant effect, and that this effect was concentrated in mergers that chose Delaware law as the governing law. In unreported results, we re-run the analysis in Panel B with controls for deal size, target profitability, and indicators for all cash transactions and diversifying mergers (the same controls used in section 6). The negative coefficient for Delaware choice of law becomes even larger and more statistically significant. However, given the small sample size for the event study, we only report the baseline results without these financial controls.

Crispo's effect on the joint value of the buyer and target is not ex-ante obvious. If *Crispo*'s weakening of Con Ed provisions made it cheaper for acquirers to breach merger agreements and walk away from the transaction, one could expect the firm value of the acquirer to increase. At the same time, the decision could inject some uncertainties into the deal, which would, presumably, put a negative pressure on both the target's and the buyer's stock price. Moreover, not enforcing a Con Ed provision could result in the target becoming more likely to seek and obtain a specific performance remedy. If that were the case, the decision can have a potentially negative effect on the buyers. Overall, the decision can lead to a reduction in joint value, through either too many inefficient breaches, the reduction in deal certainty, or an inefficient enforcement of specific performance.

We first examine the Chancery Court decision's effect on the stand-alone value of acquirers in Delaware deals. Panels C and D repeat the preceding analysis for acquirers instead of targets from Panels A and B, respectively. The results are consistent with value destruction for acquirers in Delaware deals. The results are statistically significant for fewer event windows, presumably because not all acquirers are publicly traded and the number of observations in Panels C and D is thus lower than for targets in Panels A and B.

To test *Crispo*'s effect on joint value, Panel E of Table 3 re-runs the event study analysis for mergers governed by Delaware law, with the dependent variable equal to the abnormal returns for the

value-weighted portfolio of the target and acquirer (Bradley et al. 1988, Cutler and Summers 1988).¹⁸

Since this exercise requires data on the market capitalization for both companies, our sample size is only 17. We find negative and statistically significant decreases in joint value for Delaware mergers over the longer event windows ($[0, 2]$, $[-1, 1]$, $[-2, 2]$, and $[0, 5]$). Repeating the exercise in Panel E for the joint value of mergers governed by laws of other jurisdictions, we do not find statistically significant results for any event window in untabulated results. While the results for acquirers as well as joint value should be treated with caution due to the small sample sizes, they suggest that the *Crispo* decision was welfare-reducing for mergers governed by Delaware law.

As in any event study, other factors unrelated to *Crispo* may explain the observed variations in stock prices. However, using FACTIVA, we were unable to find other news items during our event window that could specifically influence the firm value of targets in mergers governed by Delaware law. This suggests that the results in Table 3 likely reflect stock price reactions to *Crispo*.

6. Contractual Responses to *Crispo v. Musk*: Price and Non-Price Terms

The *Crispo* decision has made it less costly for buyers to breach merger agreements and can potentially lead to more inefficient, opportunistic breaches. However, the case also created the possibility for transacting parties to deal with buyer opportunism through a contractual response. Furthermore, depending on whether there is a contractual response, this could also have an impact on the deal premium. In this section, we provide tentative evidence that deal completion risk increased for Delaware deals after *Crispo*, incentivizing contracting parties to modify their agreements to counteract the effect of the Chancery Court's weakening of Con Ed terms. We then examine the non-price and price responses to *Crispo*.

¹⁸ More precisely, $AR_{joint,t} = w_{acquirer} \cdot AR_{acquirer,t} + w_{target} \cdot AR_{target,t}$, where w_j is determined based on the market capitalizations before the relevant event window. The market capitalization data comes from FactSet, and is calculated based on the closing stock price from one day before the announcement of the merger.

6.1. *Crispo* and Deal Completion Risk

The model in section 3 shows that the weakening of Con Ed provisions in *Crispo* would make buyers more willing to walk away from a deal in transactions governed by Delaware law. To see if this is borne out by the data, we analyze the prevalence of cancelled transactions in the FactSet dataset. There are considerable data limitations that we note upfront. For the raw sample of 272 mergers from FactSet, 30 (i.e., about 11% of all deals and 12.61% of non-pending deals) were cancelled, in line with the prevalence of cancellations in the literature (Ricks and Lin 2024). However, in our final sample of 232 deals for which we could find merger agreements, there are only nine cancelled mergers. Without the merger agreements, we are unable to obtain the information on the governing law for 21 of the 30 cancelled mergers. Therefore, we can only analyze the determinants of deal cancellation within our final sample where we have access to the agreements and information on governing law, recognizing that the availability of the merger agreement may not be random.¹⁹

Comparing the rates of cancellations between Delaware and non-Delaware transaction indicates *Crispo* had a differential effect on termination risk. For Delaware deals, 2 out of 95 pre-*Crispo* deals was cancelled, versus 5 out of 96 deals post-*Crispo*. On the other hand, for non-Delaware deals, 2 out of 26 pre-*Crispo* deals was cancelled, as opposed to 0 of post-*Crispo* 15 deals.²⁰ These figures are consistent with deal risk going up after *Crispo* specifically for Delaware deals, although the number of cancelled mergers in the final sample is not amenable to formal analysis.

We estimate the following regression model to examine the effect of *Crispo* on cancellation and deal completion for mergers governed by Delaware law. For a merger i for a company in industry j agreed to at time t , we run the following linear probability model:

¹⁹ The non-randomness of access to merger agreements may be especially relevant to cancelled deals (for which 21 of 30 agreements are missing, i.e., 70%) versus non-cancelled deals (for which only 19 out of 241 agreements, or 7.85%, are missing).

²⁰ These figures exclude pending deals but the analysis is qualitatively similar if we include them.

*Deal Closing Risk*_{*i,t*}

$$= \beta(Post_t \times Delaware_{i,t}) + \alpha Post_t + \eta Delaware_{i,t} + \delta X_{i,t} + \pi_j + \gamma_t + \epsilon_{i,t}. \quad (1)$$

The dependent variable *Deal Closing Risk*_{*i,t*} equals either an indicator for whether the deal was cancelled or the days between the announcement and completion dates conditional on the merger not being cancelled. We winsorize the latter continuous outcome at the 2.5% level. Our analysis in this subsection pertains to deals in the sample that had been completed or canceled as of March 2025.

*Post*_{*t*} equals 1 for the entire period after the *Crispo* decision, encompassing the period immediately after the decision as well as the period after the DGCL amendment was proposed. As is standard in the literature on mergers (Badawi et al. 2023, Kamar et al. 2009), we include controls for industry fixed effects through the variable π_j , where we define industry at the two-digit standard industrial classification (SIC) code level. γ_t is a time fixed effect term at the year level. In some specifications, we also include a vector of merger financial controls, $X_{i,t}$, namely the natural logarithm of transaction size, the ratio of enterprise value to EBITDA (a standard multiple reflecting the profitability of the target company), and indicators for whether the merger consideration was all cash and if it was a diversifying merger (i.e., the target and acquirer belonged to different two-digit SIC codes). We use robust standard errors, clustered at the governing law of the merger agreement.

Online Appendix Table OA1 presents the results of this regression model. The variable of interest, *Post*_{*t*} × *Delaware*_{*i,t*}, has a positive and statistically significant coefficient in both baselines, implying that Delaware deals are taking longer to close after *Crispo*. We caution that other factors unrelated to *Crispo* could be affecting the rate of cancellations and deal completion time. Moreover, the point estimates for the Delaware-specific increase in cancellations and deal completion time, which are 12 percentage points and ~60% of the mean completion time in the regression sample respectively,

are perhaps unrealistically high. However, the results in Table OA1 are consistent with the Chancery Court opinion increasing buyers' willingness to walk away from Delaware deals.²¹

6.2. Non-Price Response to *Crispo*

With respect to changes in non-price terms, we hand-code information on two non-price terms most likely to have changed in response to the decision. First, we collect data on whether the merger agreement explicitly allowed the target to sue on behalf of its shareholders for (material or intentional) breach of the merger agreement, after expressly granting shareholders narrow third party beneficiary status. Second, we code for whether the merger agreement explicitly designated the target company as its shareholders' "agent" (or "representative") for collecting the lost merger premia.

The explicit agency designation is a variant of the broader contractual innovation of granting the target the exclusive right to sue the buyer for lost premia. We view it as a more aggressive response, and because (as explained in the Online Appendix) its validity under Delaware law is questionable, we code it separately. The explicit agency designation always comes in addition to granting the target the right to sue on behalf of its shareholders, but not vice versa. There are 38 deals which give the target company the right to sue to recover lost premia on behalf of its shareholders but do not explicitly make it the shareholders' agent. But there are zero deals where the target firm is designated the shareholders' agent but is not given the right to sue on behalf of its shareholders (after these shareholders are granted narrow third party beneficiary status).

An illustrative example of these non-price terms is the Third Party Beneficiaries provision used in AstraZeneca's \$753.46 million cash acquisition of Icosavax, a pharmaceutical company. The merger agreement was entered into on December 11, 2023, after *Crispo*. The relevant provision, section 10.6 of the agreement,²² creates a few important conditions. First, it makes it clear that the agreement

²¹ The coefficient for $Post_t \times Delaware_{i,t}$ is not significant at traditional levels when we control for deal characteristics in columns (2) or (4), although it is borderline significant when the outcome is deal completion time.

²² See <https://www.sec.gov/Archives/edgar/data/1786255/000119312523293389/d654575dex21.htm>.

does not, expressly or impliedly, confer any third parties rights or remedies. Second, as a carve-out, if specific performance has been denied by the applicable court, it preserves the right of the target stockholders to “seek any monetary damages (including *monetary damages based on a lost premium*)” (italics added). Third, and finally, the right to receive damages granted to the target shareholders can “only be enforceable on behalf of the Company Stockholders by the Company in its sole and absolute discretion, as *agent* for the Company Stockholders” (italics added). In short, the provision recognizes the target stockholders as third-party beneficiaries in a narrow circumstance but only allows the target to sue the buyer and collected lost premium damages on behalf of the stockholders. The provision seems to deal successfully with the issues raised by *Crispo*, and contains both non-price responses of interest: allowing the target company to sue for lost premia on behalf of shareholders, and explicitly designating the target as its shareholders’ agent.

After *Crispo*, contracting parties could have granted *broad* third-party beneficiary status to target shareholders, beyond the narrow right to lost premium that is then exclusively granted to the target company as described above. There are arguments for and against such a contractual response. In the words of the *Crispo* opinion, expansive third-party beneficiary status for shareholders could backfire and lead to a “proliferation of stockholder suits,” raising the cost of business for targets. On the other hand, broad grants of third-party beneficiary status may not lead to an explosion in litigation, because shareholders suing as third-party beneficiaries are likely to be bound by exclusive forum provisions in charters and bylaws obligating them to bring suit in Delaware, where their actions would probably be consolidated into a single class action ([Laster 2024](#)).

Regardless of the wisdom of granting target shareholders broad third-party beneficiary status as a response to *Crispo*, and its effect on litigation, we do not find evidence that contracting parties took this approach in responding to the Chancery Court’s opinion. We analyze the no-third-party beneficiary provisions of merger agreements for our sample, and do not find a single contract granting

shareholders broad third-party beneficiary status beyond a limited beneficiary status for the purposes of recovering the lost premium—which can only be enforced by the target company. We therefore focus on the target company’s right to sue on behalf of its target shareholders to recover lost premium, or in some cases, act as their agent in recovering the lost premium, as the relevant contractual responses to *Crispo*.

Figure 2 graphs the average prevalence of provisions allowing targets to sue on behalf of shareholders. We split this figure into three time periods: the year before *Crispo*, the interval between *Crispo* and the proposal for DGCL amendments, and the period after the amendment proposal. We show the incidence of this provision separately for agreements governed by the laws of Delaware and other jurisdictions. Before *Crispo*, few merger agreements contained such a provision: 28.42% of merger agreements choosing Delaware law designated target companies as being able to sue on behalf of their shareholders, while 7.69% of non-Delaware agreements did so. After *Crispo* but before the proposed DGCL amendment, we see a significant jump in the prevalence of such clauses, to 48.72% (33.33%) of Delaware (non-Delaware) merger agreements. Finally, after the DGCL amendments were proposed, we find these clauses in 47.37% of Delaware merger agreements. We do not see this clause in any non-Delaware merger agreement, but this could be because of the relatively low sample size for mergers entered into after the March 2024 DGCL amendment proposal (for which we have data for 57 Delaware and only 9 non-Delaware deals).

Figure 3 shows a similar pattern in the prevalence of contract provisions designating merger targets as their shareholders’ agents in recovering lost premia, with the increase in such provisions also concentrated in agreements choosing Delaware law as the governing law. Therefore, despite concerns about buyers and targets tolerating loosening of third-party beneficiary status for target shareholders

and uncertainty regarding the doctrinal validity of targets designating themselves as their shareholders' agent, Delaware deals increasingly feature contractual fixes to *Crispo*.²³

More formally, we estimate the following linear probability model for merger i for a company in industry j agreed to at time t :

$$\begin{aligned} \text{Non} - \text{Price Term}_{i,t} \\ = \beta(\text{Post}_t \times \text{Delaware}_{i,t}) + \alpha \text{Post}_t + \eta \text{Delaware}_{i,t} + \delta X_{i,t} + \pi_j + \gamma_t \\ + \epsilon_{i,t}. \end{aligned} \quad (2)$$

$\text{Non} - \text{Price Term}_{i,t}$ is an indicator that equals 1 if the merger agreement contains the specified non-price term (depending on the regression model, either (1) allowing it to sue for breach of the agreement on behalf of shareholders or (2) explicitly designating the target company as its shareholders' agent). There is a high level of correlation between the presence of these two contractual terms (0.64), but a non-negligible number of deals feature the provision allowing the target to sue on behalf of its shareholders without an explicit agency designation.

Table 4 presents the results from estimating Equation (2). The interaction between Post_t and $\text{Delaware}_{i,t}$ has a significant and positive coefficient estimate regardless of which contractual term is the dependent variable and whether we control for deal characteristics. The baseline results indicate that Delaware mergers became about 32 percentage points more likely to allow target firms to sue on behalf of their shareholders, as well as 40 percentage points more likely to explicitly designate the targets as shareholders' agents to recover lost merger premia.²⁴

²³ One may ask why the rate of adoption is not even higher in Delaware mergers after *Crispo*. For certain deals where the parties do not anticipate any potential breach by the buyer, or the target can secure specific performance, such a provision would be unnecessary. Another explanation is that, by asking for a contractual fix, the target could be sending an "adverse" signal to the buyer (Spier 1992). This could also explain why the rate of adoption of these Con Ed provisions was low before *Crispo*.

²⁴ Both *Crispo* and *Con Ed* involved one-step mergers where target shareholders would require third-party beneficiary status to establish standing. Transactional lawyers have argued that *Crispo* is less likely to apply to two-step transactions with an initial tender offer, since shareholders participating in the first-stage tender would be able to establish a direct contractual

One concern with the results could be that they are driven by sample imbalance, because 82% of deals in our sample chose Delaware as the governing law. We thus re-run Equation (2) clustering standard errors at the industry level rather than at the choice of law. Panel A of Appendix Table OA2 presents the results of this analysis, and shows that the coefficient for the interaction between $Post_t$ and $Delaware_{i,t}$ continues to have a significant coefficient estimate. Panel B clusters on the merger's governing law, but uses the wild cluster bootstrap introduced in [Cameron et al. \(2008\)](#). While the estimated standard errors are slightly larger than the original estimates, the variable of interest continues to show a significant coefficient for both contractual responses to *Crispo*.

Next, in order to estimate the impact of law firms, we run a modified version of equation (2) where we estimate a triple difference model interacting *Post* and *Delaware Choice of Law* with an indicator variable called *Top 25 Target Law Firm*. This indicator equals 1 if the target is represented by a law firm that was among the top 25 law firms (by revenue) for U.S. targets in the year 2023, as reported by [LSEG \(2023\)](#). As seen in Table 2, Panel B, about 55% of targets in our sample were represented by a law firm in the top 25 ranking. The literature documents that elite law firms play an essential role in M&A transactions ([Krishnan and Masulis 2013](#)), including adopting legal terms, and that these law firms reuse the same boilerplate legal language across complex transactions ([Badawi and de Fontenay 2019](#), [Coates 2001](#), [Nyarko 2021](#), [Romano and Sanga 2017](#)). Our conversations with practitioners suggest that top-ranked target law firms may have more vigorously responded to *Crispo*.

Appendix Table OA3 presents the results of the triple difference model. The triple interaction term does not have a statistically significant coefficient in any model. Thus, target law firm prestige does not seem to have a consistently significant effect on either of the two contractual innovations

relationship ([Hall and Cerqueira 2024](#)). Our results persist, with the interaction between $Post_t$ and $Delaware_{i,t}$ having a larger magnitude, when we re-run the analysis in Table 4 excluding the 30 tender offers in the sample.

after *Crispo*. This seems to indicate that the contractual responses were coming not just from the top firms but were more widespread across different law firms.

Although the statistical results on non-price terms are fairly strong, one concern with our results could be that mergers governed by Delaware law may be different from those choosing the law of other jurisdictions. We do not think this concern undermines our result for three reasons. First, our conversations with experienced deals practitioners indicate that, while there may be differences between Delaware and other deals, these differences are uncorrelated with the changes *Crispo* caused to contracting practice. Second, in the regression analysis, presented in Table 4, we control for deal characteristics, along with year and industry fixed effects. Third, we re-estimate equation (2) using the entropy-balancing technique introduced by [Hainmueller \(2012\)](#). We balance the first moments of the covariates (natural logarithm of transaction size, Enterprise Value/EBITDA, and dummies for all cash transactions and diversifying mergers) for Delaware and non-Delaware mergers and run the regression for the reweighted sample. Appendix Table OA4 presents the results from the entropy-balanced analysis. The variable of interest, the interaction between $Post_t$ and $Delaware_{i,t}$, continues to have a positive and statistically significant coefficient with a high magnitude.

A related concern is that the types of deals entered into before and after *Crispo* could differ due to the impact of the decision. While this is possible, we consider it unlikely for four reasons. First, deal lawyers we interviewed stated that targets and buyers did not delay transactions because of *Crispo*, but instead responded through the contractual mechanisms documented in this paper. Second, Panel C of Table 2 presents summary statistics split by Delaware and non-Delaware choice of law, and by whether the deal was pre- or post-*Crispo*. While there are, predictably, marked differences between Delaware and other deals, there is no substantial change between the pre- and post-*Crispo* periods in terms of the observable characteristics of transactions. Third, t -tests show no significant difference in any of the merger financials we examine (size, profitability, or indicators for all-cash or diversifying

deals) before and after *Crispo*, for either the overall sample or the Delaware deals. Finally, the results persist when we match post-*Crispo* deals to pre-*Crispo* deals using a nearest-neighbor matching approach based on financial controls, as shown in Online Appendix Table OA5. Covariate balance testing shows no significant differences in covariates between pre- and post-*Crispo* deals for this matched sample.

We also examine the impact of the announcement of the proposal to amend the DGCL in response to the *Crispo* decision. Treating the post amendment proposal period separately allows us to consider the possibility that the amendment proposal itself could have been a significant event, which could have encouraged transactional parties to adopt a contractual fix.²⁵ We split the *Post* variable into two separate indicators: *Post-Crispo*, which equals 1 for mergers announced between the Chancery Court decision and the March 28, 2024 proposal of the DGCL amendments, and *Post-DGCL Proposal*, which equals 1 for mergers announced after March 28, 2024.

Online Appendix Table OA6 presents the results of this analysis. The coefficient for the interaction between Delaware choice of law and each of the time dummies (whether *Post-Crispo* or *Post-DGCL Proposal*) is positive and statistically significant for one or both of the contractual responses to *Crispo*. Transacting parties seem to have begun adopting contractual responses to *Crispo* even before the DGCL amendments were announced in March 2024, since the coefficient for the interaction between *Post-Crispo* and Delaware choice of law is positive and mostly statistically significant (though only marginally so for the right to sue, while it is $p < 0.01$ for the agency designation). The adoption of the two contractual provisions has not slowed down even after it became likely that Delaware would legislatively neutralize *Crispo*, since the coefficient for the interaction between *Post-*

²⁵ Although the DGCL amendment became effective on August 1, 2024, we focus on the amendment proposal because, based on our discussion with practitioners and judges, the *proposal* seems to be much more important than the amendment becoming effective. In an unreported result, when we also include the actual effective period for the amendment, the substantive results are the same.

DGCL Proposal and Delaware choice of law is also positive and significantly different from zero. Market participants therefore seem to rely on both private ordering and legislative change to adapt to unexpected changes in deals jurisprudence.

6.3. Deal Price Response to *Crispo*

The *Crispo* decision and the subsequent response could also lead to a change in the deal premium. As examined in Section 3, when there is no contractual response and the prospective buyers will have more opportunities to walk away from the deal without having to pay any meaningful damages, this will jeopardize certain deals, especially those with a relatively low premium (or potential surplus). This can, in turn, increase the expected premium for the deal. On the other hand, if market participants respond to *Crispo* by including target-friendly contract terms, there may be a counteracting negative effect on deal premia, because even buyers with low valuations will close transactions. Therefore, Delaware deals with contract terms responding to *Crispo* would have relatively lower premia than Delaware deals without such non-price terms.

Figure 4 presents bar graphs for mergers that chose Delaware law, split based on the agreement date (before *Crispo*, immediately after the decision, or after the DGCL amendment proposal) and if it featured any of the contractual terms described above, showing the average one-day premium. For our mergers of interest, Delaware deals including the contract terms, there was a highly statistically significant decrease in the average premium from 70.31% in the year before *Crispo* to 28.46% in the year after the decision (t -statistic of 3.058). There is no statistically significant difference in the premia for Delaware mergers not displaying the contractual terms. In unreported results, we find that there is no post-*Crispo* statistically significant change in premium for deals choosing non-Delaware governing law, regardless of whether there was a contractual response to the decision. However, this could be driven by the relatively smaller number of non-Delaware deals, so we do not depict non-

Delaware deals graphically. Figure 4 thus provides some descriptive evidence suggesting that target-friendly contract terms in mergers governed by Delaware law could have lowered premia.

To assess *Crispo*'s effect on merger premia, we first estimate the following regression model, for a target in merger i belonging to industry j with a merger agreement finalized at time t :

$$\begin{aligned} \text{Premium}_{i,t} = & \beta(\text{Post}_t \times \text{Delaware}_{i,t}) + \alpha \text{Post}_t + \eta \text{Delaware}_{i,t} + \delta X_{i,t} + \pi_j + \gamma_t \\ & + \epsilon_{i,t}. \end{aligned} \quad (3)$$

The outcome variable, $\text{Premium}_{i,t}$, equals the difference between the merger price and the stock price of the target either one, five, or thirty days before the merger announcement, as a percentage of the pre-announcement stock price. To prevent outliers from driving our results, we winsorize both our premium measures at the 2.5% level on both tails. Table 5 presents the results from estimating equation (3). The interaction between Post_t and $\text{Delaware}_{i,t}$ has a negative coefficient for all models, but it is only significant ($p < 0.1$) for the baseline models using the one- and five-day premia. The result suggests that the deal premium decreased for deals governed by Delaware law after *Crispo*.

There are, however, limitations to this finding. First, the coefficient of interest is not significant at traditional levels for many of the models, especially those using the thirty-day premium. The thirty-day premium may be less likely to reflect information leakage from the merger, indicating that the finding regarding the decrease in premium should be treated with caution. Second, the premium analysis differs from the event study because it covers a relatively long period of time, and is distinct from our study of contractual terms because, unlike the adoption of Con Ed terms, the premium can be affected by many factors. Therefore, we cannot rule out that any change in premium we observe is driven by other market factors or time trends unrelated to *Crispo*.

Most importantly, our theoretical analysis in Section 3 indicates that the important post-*Crispo* variation in premia should be between Delaware deals that contain responsive non-price contractual terms and Delaware deals that do not contain such contractual provisions. The analysis in Table 5 is

lumping together all deals regardless of whether an individual transaction had a non-price contractual response to the *Crispo* decision.

To unpack the impact of the contractual fix on the deal premium, we estimate the following regression model for the merger premium, restricted to the set of deals choosing Delaware law:

$$\begin{aligned} \text{Premium}_{i,t} = & \beta(\text{Post}_t \times \text{Non-Price Response}_{i,t}) + \alpha \text{Post}_t + \eta \text{Non-Price Response}_{i,t} \\ & + \delta X_{i,t} + \pi_j + \gamma_t \\ & + \epsilon_{i,t}. \end{aligned} \quad (4)$$

Non-Price Response equals 1 if the deal adopted either of the contractual provisions. Table 6 presents the results of this model. The term of interest, $\text{Post}_t \times \text{Non-Price Response}_{i,t}$, has a negative and highly significant coefficient when we use one- and five-day premia as the outcome, regardless of whether we control for financials.²⁶ This indicates that merger premia specifically decreased for Delaware deals that adopted target-friendly contractual non-price terms.

While the results on merger premia are consistent with the theory, a number of caveats are in order. First, price and non-price responses are presumably co-determined by the change in deals jurisprudence after *Crispo*. It may be difficult to argue that non-price terms are either predictive of or affect the size of the deal premium. Second, the results in columns (1) through (4) indicate a relative decline in merger premia of 27 to 46 percentage points for Delaware deals with non-price terms, as compared to Delaware deals without such terms. These point estimates are quite high, and may again indicate that changes in premia may be driven by factors unrelated to *Crispo*. Third, the coefficient of interest is again not statistically significant when we use the thirty-day premium as the outcome. While the results are consistent with the hypothesis regarding the relationship between price and non-price terms, we do not want to overstate them. Collectively, the empirical results indicate that the primary

²⁶ When we similarly run a modified version of equation (4), estimating a triple difference model interacting *Post*, *Delaware Choice of Law*, and *Non-Price Response*, the triple difference term has a negative and statistically significant coefficient.

effect of *Crispo* was the introduction of pro-target contractual terms in deals choosing Delaware law. We have some evidence that, among post-*Crispo* Delaware deals, transactions adopting contract terms responding to the Chancery Court decision had relatively lower premia than Delaware deals without these contractual provisions.

6.4. Additional Analysis

The *Crispo* opinion relied heavily on the earlier 2005 *Consolidated Edison* decision by the Second Circuit. Applying New York law, *Consolidated Edison* disallowed target shareholders from recovering lost premium from a breaching buyer when no third-party beneficiary provision is in the agreement. Given our results, *Consolidated Edison* may have similarly affected target value and premia for affected transactions. In Online Appendix Tables OA7 and OA8, we verify this intuition. Targets in announced—but not completed or withdrawn—mergers governed by New York law exhibited negative and statistically significant abnormal returns in event windows around the decision date, October 12, 2005. Comparing deals announced in the year before *Consolidated Edison* to those in the year after, New York deals saw an economically and statistically significant decrease in one-day, five-day, and thirty-day premia. This decrease in premium is consistent with contractual responses to the *Consolidated Edison* decision pushing deal prices down, because transactional lawyers pioneered the three *Con Ed* provisions in response to the Second Circuit ruling.

The facts, scope, and novelty of the *Commonwealth Edison* and *Crispo* decisions differ—the former was decided 18 years earlier, was decided by the Second Circuit rather than the Chancery Court, and affected New York rather than Delaware deals. However, both the main analysis of *Crispo* and the confirmatory results regarding *Commonwealth Edison* in the Online Appendix are consistent with the predictions of Section 3's theoretical model regarding firm value and merger premia.

Separately, we also verify that the main result persists upon including controls for factors likely to be correlated with contractually responding to *Crispo*. First, we add a control for whether the merger

featured a financial buyer to reflect the fact that merger negotiations are likely different depending on whether the purchaser is a strategic or financial entity. Second, we control for whether the merger agreement included a reverse termination fee in case the buyer materially breached the contract. We include this control because, as explained in the Online Appendix, a reverse termination fee may act as a substitute for contractual fixes to *Crispo*.²⁷ We collect the financial buyer information from FactSet, while we hand-code the data for reverse termination fees for material breach based on our analysis of the merger agreements. The results in Online Appendix Table OA9 show that the variable of interest, *Post × Delaware Choice of Law*, continues to have a positive and statistically significant coefficient, controlling for either the financial buyer or reverse termination fee indicators.²⁸

7. Conclusion

Anticipating and contracting for potential merger failures is an important way that transacting parties can add significant value to a merger. The earlier literature has largely focused on the ability of the target corporation to accept a superior offer from a competing bidder or the ability of the buyer to walk away from the transaction when the target suffers a “material adverse change” (Choi 2021, Choi and Triantis 2010). There has been little examination of how contracting parties deal with a merger partner’s breach. More broadly, the issue of whether and to what extent commercial parties respond to an exogenous change in the legal environment has been an important question in contract and commercial law. *Crispo v. Musk*, one of the most important recent decisions in mergers and acquisitions jurisprudence, provides a valuable opportunity to examine these issues.

The paper provides a stylized model that generates a number of empirical predictions. Analyzing the deals that were open at the time of the decision, we find that the decision had a

²⁷ Specific performance can also act as a substitute for the contractual fixes. However, all but three of the deals in our sample have a specific performance provision. It is therefore not appropriate to include specific performance as a control similar to our analysis of reverse termination fees.

²⁸ In two of the six models, where we include the full battery of deal controls, this coefficient is not significant at traditional levels. But this is likely because the covariates themselves are highly correlated with either the financial buyer or reverse termination fee variable. For example, *all* financial buyer transactions are all cash deals.

statistically significant, negative effect on the stock prices of Delaware targets. The event study further shows a decline in the joint values of targets and buyers around the decision date. Using manually collected data on merger agreement provisions, the paper has shown that, since the decision, transacting parties in Delaware deals have become significantly more likely to adopt contractual provisions designed to counteract *Crispo*. Consistent with the theoretical model, one- and five-day merger premia decreased for Delaware deals with the contractual fixes, relative to Delaware deals without such non-price responses. However, this decrease in premia does not hold when merger premia are measured over the thirty-day period, and changes in premia may reflect factors unrelated to *Crispo*.

The analysis shows that transactional lawyers responded both quickly and substantively to the decision. Nonetheless, there are notable variations in these contractual responses, with some post-*Crispo* deals lacking any provisions responding to the Chancery Court decision. These variations raise interesting questions regarding how and why lawyers respond differently to a legal shock. We intend to examine these contractual variations more in future research.

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Figure 1**Cumulative Abnormal Returns for Delaware Deals in the [0,5] Period**

This figure shows the 95% confidence intervals for the cumulative abnormal returns for targets in mergers with Delaware choice of law that had been announced but not completed or withdrawn after *Crispo* was announced, over the [0, 5] window. Day “0” is October 31, 2023, when *Crispo* was decided. The abnormal returns are calculated using the Fama-French three factor asset pricing model and are winsorized at the 2.5% level.

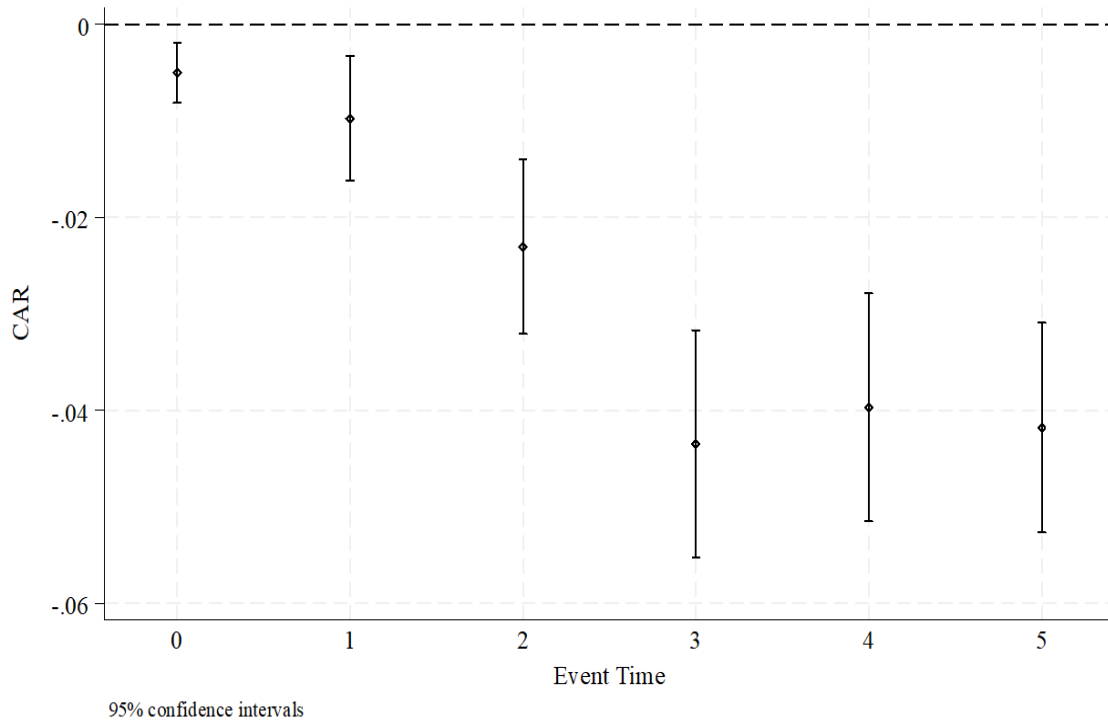


Figure 2**Target Right to Sue on Behalf of Shareholders: Before and After *Crispo***

This figure graphs the average share of merger agreements that explicitly allow the target company to sue on behalf of its shareholders for breaches of the merger agreement, split by whether the merger agreement was finalized before or after *Crispo* and whether it chose Delaware governing law.

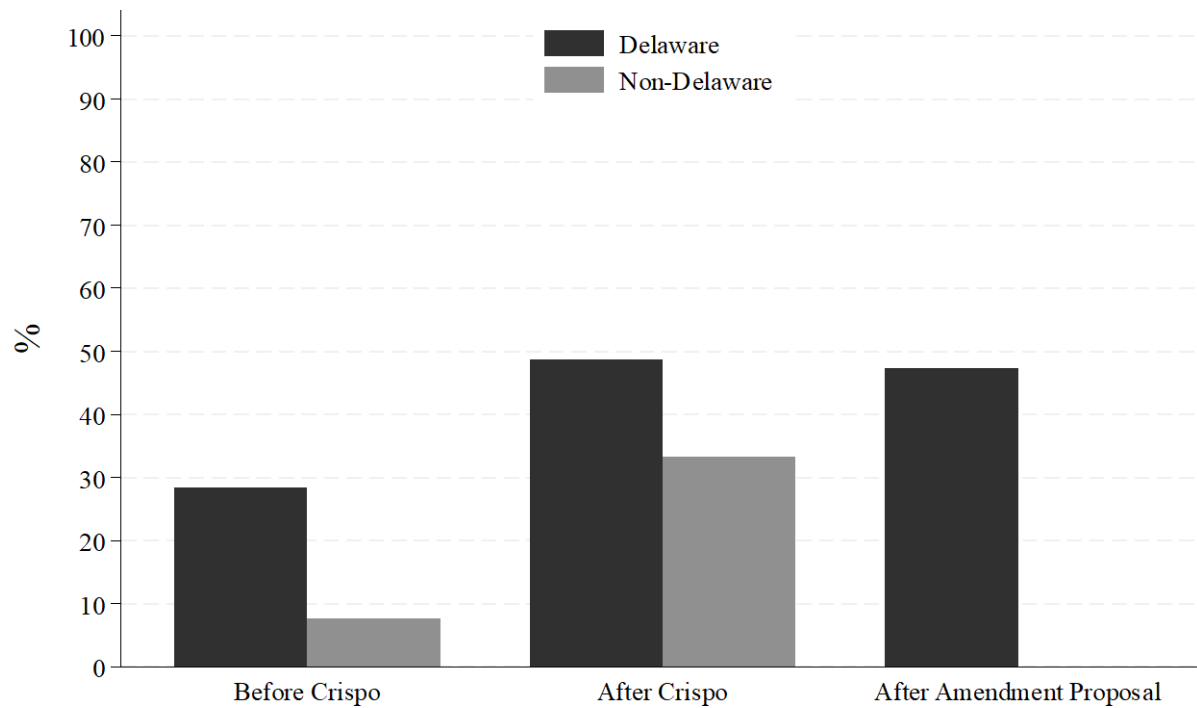


Figure 3**Explicit Agency Designation: Before and After *Crispo***

This figure graphs the average share of merger agreements that explicitly designate the target company as its shareholders' agent for recovering lost merger premia, split by whether the merger agreement was finalized before or after *Crispo* and whether it chose Delaware governing law.

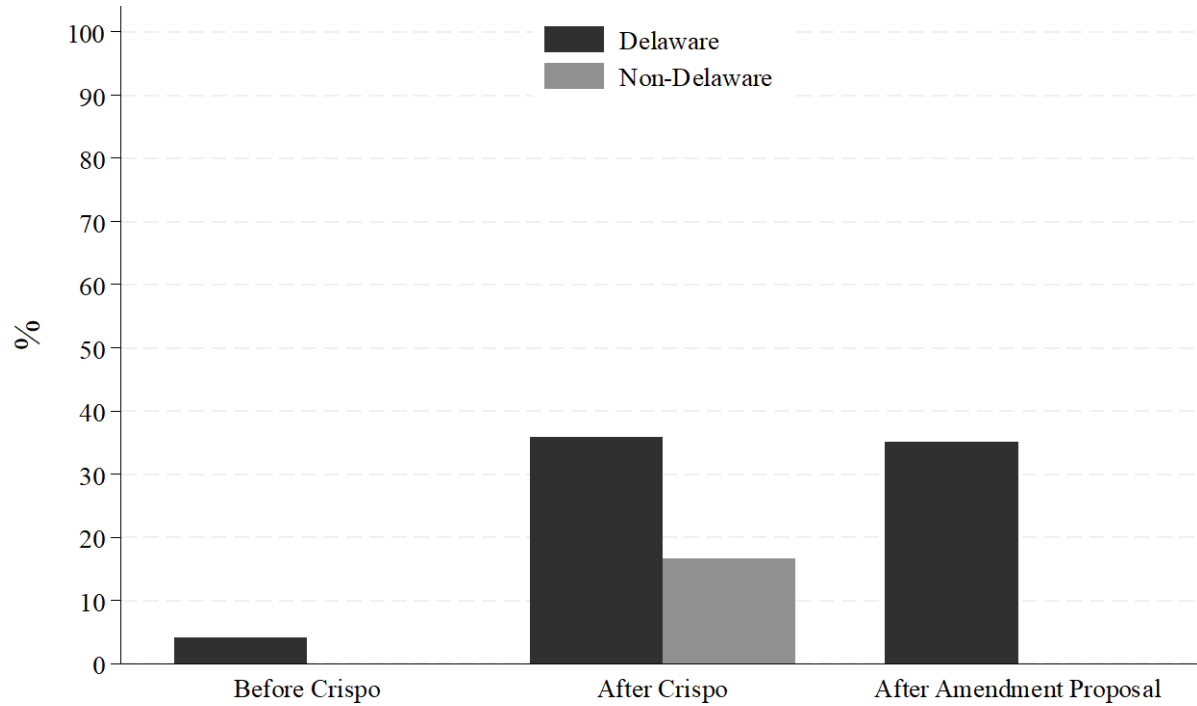


Figure 4

Merger Premia for Delaware Deals: Before and After *Crispo*

This figure shows the average one-day premia for mergers with Delaware choice of law. The darker bars represent average merger premia without a contractual provision while grey bars represent merger premia with a contractual provision.

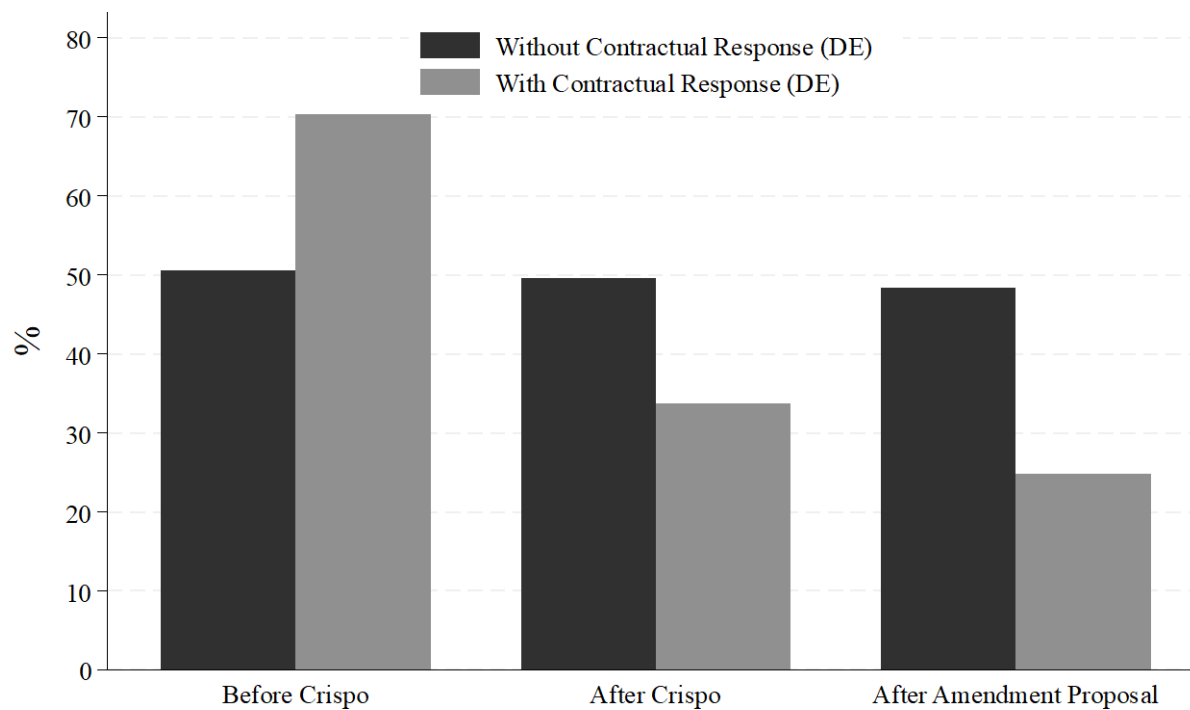


Table 1

Variable Definitions

Variable	Definition	Source
All Cash Transaction	An indicator equal to 1 if the merger consideration solely consisted of cash	FactSet
CAR	Cumulative abnormal return estimated in a given event-window using the three-factor Fama French model	WRDS, manual checks
Company Right to Sue on Behalf of Shareholders	An indicator variable equal to 1 if the merger agreement allows the target company to sue on behalf of its shareholders for breaches of the merger agreement	Hand-Coding
Delaware Choice of Law	An indicator variable equal to 1 if the merger agreement is governed by Delaware law	FactSet, Hand-Coding
Diversifying Merger	An indicator variable equal to 1 if the two-digit SIC codes of the target and acquirer are different	FactSet, Hand-Coding
Enterprise Value/EBITDA	The ratio of enterprise value to earnings before interest, tax, depreciation, and amortization	FactSet
Explicit Agency Designation	An indicator variable equal to 1 if the merger agreement designates the merger target as its shareholders' agent for recovering lost merger premia	Hand-Coding
Five Day Premium	The difference between merger price and the stock price of the target five days before the merger announcement, as a percentage of that stock price	FactSet
Ln(Transaction Size)	The natural logarithm of the value of the merger	FactSet
Non-Price Response	An indicator variable equal to 1 if the merger agreement includes a contractual provision to address the effect of <i>Crispo</i>	Hand-Coding
One Day Premium	The difference between merger price and the stock price of the target one day before the merger announcement, as a percentage of that stock price	FactSet
Post	An indicator variable equal to 1 if the merger agreement was finalized after the <i>Crispo</i> decision was announced on October 31st, 2023	FactSet, Hand-Coding

Post-<i>Crispo</i>	An indicator variable equal to 1 if the merger agreement was finalized after the <i>Crispo</i> decision was announced on October 31st, 2023 but before the DGCL amendment was proposed on March 28th, 2024	FactSet, Hand-Coding
Post-DGCL Proposal	An indicator variable equal to 1 if the merger agreement was finalized after the DGCL amendment in response to the <i>Crispo</i> decision was proposed on March 28th, 2024	FactSet, Hand-Coding
Thirty Day Premium	The difference between merger price and the stock price of the target thirty days before the merger announcement, as a percentage of that stock price	FactSet
Top 25 Target Law Firm	An indicator variable equal to 1 if the merger target was represented by a law firm ranked in the top 25 based on deal volume in LSEG (2023) 's report for U.S. targets	LSEG (2023)

Table 2
Summary Statistics

This table presents the summary statistics for the data used in the paper. All variables are defined in Table 1.

Panel A. Event Study Targets Sample

	N	Mean	Median	SD
AR[0]	49	-0.39	-0.55	1.29
CAR[0,1]	49	-0.56	-0.80	1.70
CAR[0,2]	49	-1.80	-2.23	2.65
CAR[-1,1]	49	-0.78	-1.10	3.14
CAR[-2,2]	49	-1.89	-2.23	3.72
CAR[0,5]	49	-2.94	-3.25	3.35
CAR[-7,-3]	49	0.65	1.11	3.03
Delaware Choice of Law	49	.71	1	.46

Panel B. FactSet Sample

	N	Mean	Median	SD
All Cash Transaction	232	.67	1	.47
Company Right to Sue on Behalf of Shareholders	232	.33	0	.47
Delaware Choice of Law	232	.82	1	.38
Diversifying Merger	229	.66	1	.47
Explicit Agency Designation	232	.17	0	.37
Enterprise Value/EBITDA	200	.22	9.3	182.7
Five Day Premium	231	47.51	28.51	59.63
Ln(Transaction Size)	232	7.48	7.52	1.42
Non-Price Response	232	.33	0	.47
One Day Premium	231	45.31	26.51	60.93
Post	232	.48	0	.5
Thirty Day Premium	231	52.47	36.12	57.45
Top 25 Target Law Firm	232	.55	1	.5

Panel C. FactSet Sample, Split by Time Period and Governing Law

<i>Pre-Crispo Deals</i>								
	Delaware Deals				Non-Delaware Deals			
	N	Mean	Median	SD	N	Mean	Median	SD
All Cash Transaction	95	.75	1	.44	26	.23	0	.43
Company Right to Sue on Behalf of Shareholders	95	.28	0	.45	26	.08	0	.27
Diversifying Merger	95	.69	1	.46	25	.48	0	.51
Explicit Agency Designation	95	.04	0	.2	26	0	0	0
Enterprise Value/EBITDA	87	-20.19	7.82	235.69	16	7.7	13.88	39.88
Five Day Premium	95	57.3	31.77	68.8	26	33.91	25.16	54.46
Ln(Transaction Size)	95	7.53	7.51	1.45	26	6.88	6.63	1.45
Non-Price Response	95	.28	0	.45	26	.08	0	.27
One Day Premium	95	56.18	30.73	71.5	26	34.26	19.91	59.56
Top 25 Target Law Firm	95	.67	1	.47	26	.38	0	.5

<i>Post-Crispo Deals</i>								
	Delaware Deals				Non-Delaware Deals			
	N	Mean	Median	SD	N	Mean	Median	SD
All Cash Transaction	96	.73	1	.45	15	.53	1	.52
Company Right to Sue on Behalf of Shareholders	96	.48	0	.5	15	.13	0	.35
Diversifying Merger	94	.68	1	.47	15	.67	1	.49
Explicit Agency Designation	96	.35	0	.48	15	.07	0	.26
Enterprise Value/EBITDA	90	18.79	9.63	140.68	7	-1.87	9.69	44.48
Five Day Premium	95	43.25	24.73	53.3	15	36.05	25.15	31.56
Ln(Transaction Size)	96	7.72	7.63	1.31	15	6.68	6.8	1.37
Non-Price Response	96	.48	0	.5	15	.13	0	.35
One Day Premium	95	38.99	20.67	51.54	15	35.6	24.78	33.17
Top 25 Target Law Firm	96	.51	1	.5	15	.27	0	.46

Table 3
Event Study Results

This table presents the results of an event study using the Fama-French three-factor asset pricing model. Panel A (C) shows the cumulative abnormal returns over different event windows for targets (acquirers) in mergers governed by Delaware law, for deals that had been announced but not completed or withdrawn as of the date *Crispo* was announced. Panel B (D) shows the coefficient for Delaware choice of law in a difference-in-differences analysis where the dependent variable is cumulative abnormal returns for targets (acquirers) over different event windows and the control group is mergers that did *not* choose Delaware as governing law and had similarly been announced (but not completed or withdrawn) before the Chancery Court's decision in *Crispo*. Panel E shows the joint cumulative abnormal returns over different event windows for mergers governed by Delaware law. Standard errors in all panels are robust, and for Panel B are clustered at the level of the merger agreement's governing law. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

Panel A. Stock Price Effect of <i>Crispo</i> for Targets in Mergers Governed by DE Law						
(1)	(2)	(3)	(4)	(5)	(6)	(7)
AR[0]	CAR[0,+1]	CAR[0,+2]	CAR[-1,+1]	CAR[-2,+2]	CAR[0,5]	CAR[-7,-3]
-0.436**	-0.699***	-2.273***	-1.302***	-2.577***	-3.735***	0.466
(-2.74)	(-2.56)	(-5.84)	(-2.86)	(-5.05)	(-7.42)	(1.00)
N=35. <i>t</i> -statistics in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.						

Panel B. Difference-in-Differences Analysis: Coefficient for DE Choice of Law (Targets)						
(1)	(2)	(3)	(4)	(5)	(6)	(7)
AR[0]	CAR[0,+1]	CAR[0,+2]	CAR[-1,+1]	CAR[-2,+2]	CAR[0,5]	CAR[-7,-3]
-0.178	-0.499	-1.653**	-1.820***	-2.406*	-2.792***	-0.652
(-0.32)	(-1.34)	(-2.29)	(-2.85)	(-2.07)	(-5.54)	(-0.57)
N=49. <i>t</i> -statistics in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.						

Panel C. Stock Price Effect of <i>Crispo</i> for Acquirers in Mergers Governed by DE Law						
(1)	(2)	(3)	(4)	(5)	(6)	(7)
AR[0]	CAR[0,+1]	CAR[0,+2]	CAR[-1,+1]	CAR[-2,+2]	CAR[0,5]	CAR[-7,-3]
0.010 (0.03)	-0.645 (-1.30)	-0.868 (-1.42)	-1.212* (-2.06)	-2.565*** (-3.24)	-2.590** (-2.24)	-0.947 (-1.10)
N=17. <i>t</i> -statistics in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.						

Panel D. Difference-in-Differences Analysis: Coefficient for DE Choice of Law (Acquirers)						
(1)	(2)	(3)	(4)	(5)	(6)	(7)
AR[0]	CAR[0,+1]	CAR[0,+2]	CAR[-1,+1]	CAR[-2,+2]	CAR[0,5]	CAR[-7,-3]
-0.076 (-0.10)	-0.886 (-0.94)	-1.73 (-1.28)	-1.433* (-2.05)	-2.887** (-2.88)	-3.896*** (-5.06)	-1.239 (-1.50)
N=28. <i>t</i> -statistics in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.						

Panel E. Stock Price Effect of <i>Crispo</i> for Joint Value of Mergers Governed by DE Law						
(1)	(2)	(3)	(4)	(5)	(6)	(7)
AR[0]	CAR[0,+1]	CAR[0,+2]	CAR[-1,+1]	CAR[-2,+2]	CAR[0,5]	CAR[-7,-3]
-0.106 (-0.35)	-0.677 (-1.44)	-1.097** (-2.32)	-1.292** (-2.34)	-2.685*** (-3.89)	-2.687** (-2.74)	-0.782 (-1.05)
N=17. <i>t</i> -statistics in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.						

Table 4
Contractual Responses to *Crispo*

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the company can sue on behalf of shareholders for breach of the merger agreement in columns (1) and (2), and for whether the merger agreement explicitly designated the target as its shareholders' agent to recover lost premia in columns (3) and (4). All models use data from mergers announced between October 31, 2022 (i.e., a year before the *Crispo* decision) and October 31, 2024 (a year after the *Crispo* decision). All specifications include industry and year fixed effects, and columns (2) and (4) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. The ^{***}, ^{**}, and ^{*} denote significance at the 1%, 5%, and 10% levels.

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) <i>Company Right to Sue on Behalf of Shareholders</i>	(3) <i>Explicit Agency Designation</i>	(4) <i>Explicit Agency Designation</i>
	Baseline	With Deal Financials	Baseline	With Deal Financials
Post	0.053 (0.374)	-0.170 (-0.615)	0.033 (1.146)	-0.104 (-1.174)
Delaware Choice of Law	0.103 (1.623)	0.014 (0.124)	0.063** (2.460)	-0.098 (-1.387)
Post $\times$ Delaware Choice of Law	0.316*** (3.198)	0.520* (2.445)	0.402*** (8.268)	0.583*** (5.608)
Ln(Transaction Size)		0.052*** (5.114)		0.052*** (8.856)
Enterprise Value/EBITDA		-0.000*** (-4.105)		0.000*** (40.901)
All Cash Transaction		0.237*** (4.792)		0.054*** (6.798)
Diversifying Merger		0.073* (2.095)		0.066*** (4.408)
Observations	210	177	210	177
Adjusted R-squared	0.191	0.189	0.202	0.239
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Table 5
Merger Premia after *Crispo*

This table presents the results of an ordinary least squares (OLS) linear regression model where the dependent variable is the one-day merger premium in columns (1) and (2), five-day merger premium in columns (3) and (4), and thirty-day merger premium in columns (5) and (6). All models use data from mergers announced between October 31, 2022 (i.e., a year before the *Crispo* decision) and October 31, 2024 (a year after the *Crispo* decision). All specifications include industry and year fixed effects, and columns (2), (4), and (6) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. All dependent variables are winsorized at the 2.5% level. The ^{***}, ^{**}, and ^{*} denote significance at the 1%, 5%, and 10% levels.

	(1) Baseline	(2) <i>One Day Premium</i> With Deal Financials	(3) Baseline	(4) <i>Five Day Premium</i> With Deal Financials	(5) Baseline	(6) <i>Thirty Day Premium</i> With Deal Financials
Post	-6.423 (-0.589)	9.872 (0.524)	5.231 (0.455)	21.65 (1.150)	26.65* (1.863)	29.74 (1.272)
Delaware Choice of Law	-1.582 (-0.257)	3.452 (0.265)	2.321 (0.414)	10.58 (0.754)	3.083 (0.478)	-1.786 (-0.136)
Post x Delaware Choice of Law	-13.80* (-1.856)	-25.89 (-1.726)	-14.06* (-1.984)	-26.92 (-1.709)	-9.913 (-1.173)	-7.576 (-0.379)
Ln(Transaction Size)		-19.64*** (-8.360)		-18.77*** (-8.830)		-13.37*** (-7.056)
Enterprise Value/ EBITDA		0.0461*** (14.08)		0.0400*** (14.54)		0.0333*** (10.01)
All-Cash		-16.35** (-3.293)		-12.56** (-3.122)		-0.0523 (-0.0104)
Diversifying Merger		12.21** (3.084)		12.80*** (3.824)		11.14** (2.767)
Observations	208	175	208	175	208	175
Adjusted R- squared	0.220	0.338	0.220	0.333	0.302	0.361
Industry Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes

Table 6

Merger Premia after *Crispo* for Delaware Deals with Non-Price Controls

This table presents the results of an ordinary least squares (OLS) linear regression model where the dependent variable is the one-day merger premium in columns (1) and (2), five-day merger premium in columns (3) and (4), and thirty-day merger premium in columns (5) and (6). All models use data from mergers governed by Delaware law and announced between October 31, 2022 (i.e., a year before the *Crispo* decision) and October 31, 2024 (a year after the *Crispo* decision). All specifications include industry and year fixed effects, and columns (2), (4), and (6) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the industry level. All dependent variables are winsorized at the 2.5% level. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

	(1) <i>One Day Premium</i> Baseline	(2) <i>One Day Premium</i> With Deal Financials	(3) <i>Five Day Premium</i> Baseline	(4) <i>Five Day Premium</i> With Deal Financials	(5) <i>Thirty Day Premium</i> Baseline	(6) <i>Thirty Day Premium</i> With Deal Financials
Post	18.57 (1.211)	9.581 (0.827)	27.49* (1.987)	17.53 (1.494)	44.54** (2.731)	35.72 (1.599)
Non-Price Response	15.29* (2.051)	20.33* (1.823)	12.00** (2.222)	16.31* (1.788)	10.32 (1.386)	10.34 (1.076)
Post x Non-Price Response	-45.50** (-2.667)	-33.45** (-2.340)	-39.10** (-2.554)	-27.36** (-2.178)	-20.60 (-1.639)	-6.666 (-0.650)
Ln(Transaction Size)		-21.27** (-2.717)		-20.19** (-2.589)		-15.13** (-2.091)
Enterprise Value/EBITDA		0.0485** (2.308)		0.0418* (1.981)		0.0313 (1.562)
All-Cash Transaction		-22.54* (-1.727)		-17.81 (-1.344)		-7.855 (-0.651)
Diversifying Merger		8.913 (1.587)		10.25** (2.359)		7.816 (1.200)
Observations	168	153	168	153	168	153
Adjusted R-squared	0.181	0.341	0.182	0.339	0.263	0.355
Industry Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes

ONLINE APPENDIX

The Legal Background

In most merger transactions with a public target, the transacting parties use a triangular structure, under which a buyer's merger subsidiary, without any physical assets or prior operations, will merge with the target corporation. Once the merger becomes effective, the surviving corporation becomes a wholly-owned subsidiary of the buyer, with all the assets and operations of the target. The contracting entities in the merger agreement are the buyer, the target, and the merger sub. The merger agreements will often expressly stipulate that, except in narrow circumstances, the agreement does not confer any rights to third parties.

Although the target shareholders receive consideration in the transaction, they do not have the right to bring lawsuits against the buyer in case the merger fails to consummate due to the buyer's breach of the agreement. In *Consolidated Edison v. Northeast Utilities*,²⁹ decided in 2005, the Second Circuit Court ruled that when a third-party beneficiary provision in a merger contract limits the rights of target shareholders to bring suit to post-closing, the target shareholders cannot bring a suit against a breaching buyer to collect the merger consideration. At the same time, because the target corporation is not entitled to receive anything from the merger and, before and after the merger, remains (de jure) the same, in case the buyer breaches the agreement and the merger fails to consummate, the target corporation, as a contracting entity, is arguably not entitled to any substantial monetary damages.³⁰

Assuming that the target corporation is not suffering any substantial harm from the buyer's breach, unless the target corporation can receive specific performance or a contractually-stipulated reverse termination fee as a remedy, this state of affairs can potentially endow the buyer with almost

²⁹ 426 F.3d 524 (2d Cir. 2005).

³⁰ The target corporation, at least, can seek reliance damages, which could include the expenses incurred in negotiating the transaction. This would, however, pale in comparison to the magnitude of the lost premium.

complete freedom over whether to close the transaction or breach the agreement and walk away from the transaction.

Soon after the *Consolidated Edison* case, M&A lawyers, concerned about allowing a prospective buyer too much free rein, devised contractual solutions called “Con Ed” provisions. One of these Con Ed provisions was to define the target’s damages from a buyer’s breach to include the lost premium. Given that the original *Con Ed* decision was based on New York law, it was not entirely clear whether such a provision would be upheld in Delaware. M&A lawyers seemed to operate with a plausible assumption that the Delaware courts would honor such a provision.

Their expectation was, however, dashed in *Crispo v. Musk*.³¹ The Chancery Court addressed the enforceability of the lost premium provision contained in the merger agreement entered into in Elon Musk’s acquisition of Twitter. According to the court, since only the Twitter shareholders are entitled to receive a premium in case the merger closes, but the shareholders are not granted a third-party beneficiary status under the agreement, under the anti-penalty doctrine in contract law, the lost premium provision was not enforceable. Hence, according to the court, the plaintiff-shareholder did not have a meritorious claim to begin with and was not entitled to a mootness fee. The doctrinal takeaway from *Crispo* is that Delaware deals cannot define the target’s damages to include the lost premium.

M&A lawyers have made a few drafting proposals in response to *Crispo*. Most importantly, other Con Ed provisions already in use before *Crispo* remain available. One Con Ed provision is to loosen the no third-party beneficiary provision. For instance, the agreement can recognize third-party rights to the shareholders only when the agreement has been terminated in response to the buyer’s material or intentional breach. This narrow third-party right grant would then allow the target to pursue other remedies, including specific performance, for buyer’s breach and avoid target shareholder

³¹ 304 A.3d 567 (Del. Ch. 2023).

lawsuit against the buyer, at least until the target has terminated and abandoned the transaction. However, one issue with this proposal is whether a prospective buyer would agree to such a modification. Target shareholders can potentially bring direct claims against the buyer with an “alleged” breach by the buyer. The fear of litigation may lead a buyer to protest any loosening of the third-party beneficiary bar for target shareholders. Target corporations, similarly, may not want to give up their control over litigation by allowing their shareholders to bring suit against breaching buyers.

The other surviving type of Con Ed provision is to expressly endow the target corporation with the exclusive right to sue a breaching buyer, by making the target an *agent* to collect a lost premium. This agency designation solution, however, is on less solid doctrinal footing, as pointed out in the *Crispo* opinion itself. If the agency relationship has not been created before the shareholders’ meeting, it is unclear what would happen if the buyer were to breach the agreement before a target shareholder meeting has taken place. Certain deals, such as a two-step transaction under DGCL 251(h), do not require a shareholder vote. It is also not entirely clear whether a majority of the target shareholders can create an agency relationship (by approving the proposed merger) for all stockholders.³² Finally, whether such a relationship can be created *unilaterally* by the target when the agreement is executed and before the shareholders’ meeting is also unclear. The *Crispo* opinion itself expressed doubts about the agency approach, while declining to definitively rule on its validity.³³

Beyond the alternative Con Ed provisions, another option is to utilize a reverse termination fee provision, by, for instance, allowing the target to collect a reverse termination fee from the buyer when the buyer has materially or intentionally breached the agreement and the deal has been terminated. There were at least two issues with utilizing reverse termination fees. First, traditionally,

³² Instead of trying to create an agency relationship using a merger agreement, another proposal is to create that relationship through a charter or a shareholder-adopted bylaw provision. Similar challenges will likely arise under this proposal.

³³ See *Crispo v. Musk*, 304 A.3d 567, 581 (Del. Ch. 2023) (“there is no legal basis for allowing one contracting party to unilaterally and irrevocably appoint itself as an agent for a non-party for the purpose of controlling that party's rights”).

reverse termination fees have been kept at less than 10% (usually around 3 to 5%) of the target valuation. Compared to the lost premium, the size would be too small. Second, under the *Crispo* reasoning, reverse termination fees would be subject to challenge, as well, since the fee, as liquidated damages, would allow the target to collect stipulated damages while it is the shareholders who lose from busted deals.

While the M&A lawyers were devising responses to the *Crispo* decision, on March 28, 2024, the Council of the Corporation Law Section of the Delaware State Bar Association made a formal proposal to amend the Delaware General Corporation Law. In particular, the proposal amended DGCL 261 to allow transacting parties to include two provisions in their merger agreements. Under the new section 261(a)(1), the merger agreement can include a provision for penalties (including a lost premium) against a party's failure to perform or consummate the merger. This is regardless of the contract law's prohibition against a penalty. Second, under the new section 261(a)(2), the merger agreement can appoint one or more persons (presumably, the target corporation) as the "representative" of the stockholders with the exclusive authority to enforce the rights of the stockholders, including the right to receive payments. According to the proposal, such appointment will be effective at the time of the execution of the merger agreement and will be binding on all shareholders. The Delaware legislature approved these changes, and the state's Governor signed the amendment into law on July 17, 2024. The modified DGCL 261 came into effect on August 1, 2024,³⁴ and effectively neutralized the impact of the *Crispo* decision.

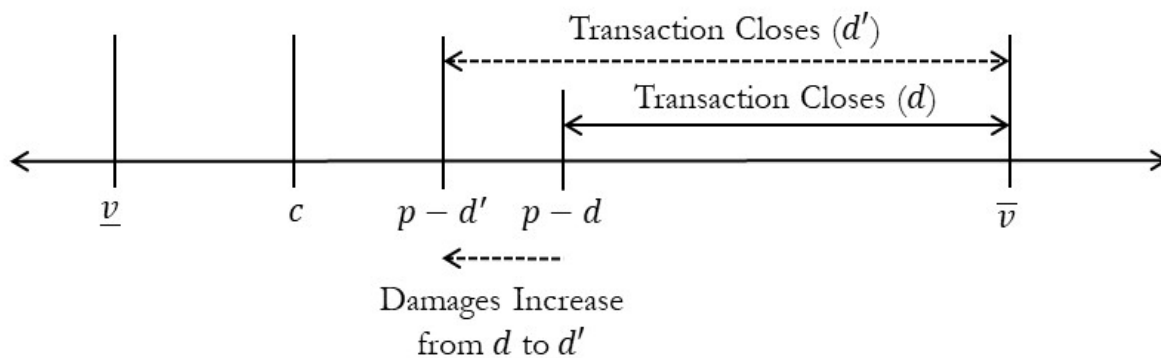
³⁴ See <https://www.foley.com/insights/publications/2024/07/delaware-market-practice-amendments-general-corporation-law/>.

Additional Results

Appendix Figure OA1

The Impact of Damages on Transactions

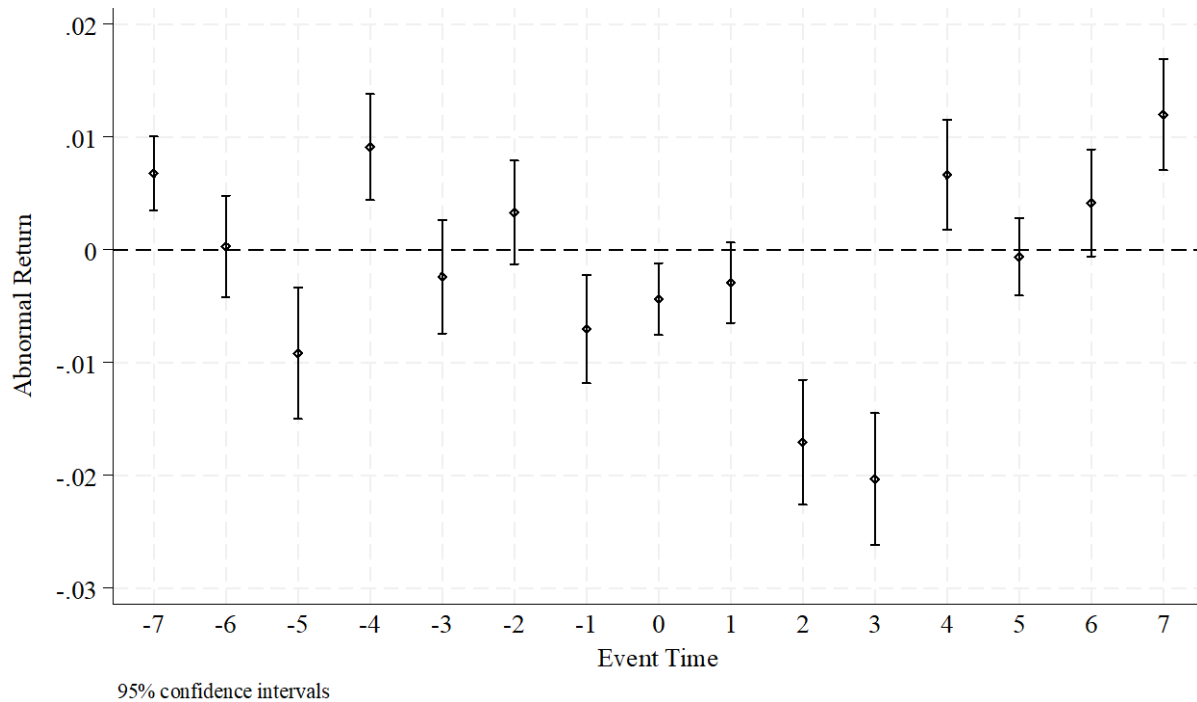
This figure depicts how changes in contractual remedy could affect the probability that transactions choosing Delaware law close, as predicted in the theoretical model contained in section 3.



Appendix Figure OA2

Abnormal Returns for Delaware Mergers around *Crispo*

This figure shows the 95% confidence intervals for the abnormal returns for targets in mergers with Delaware choice of law that had been announced but not completed or withdrawn as of the date *Crispo* was announced, over the $[-7, 7]$ window. Day “0” is October 31, 2023, when *Crispo* was decided. The abnormal returns are calculated using the Fama-French three factor asset pricing model and are winsorized at the 2.5% level.



Appendix Table OA1

Did *Crispo* Affect Deal Completion Risk?

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the deal was cancelled in columns (1) and (2), and the days between completion and announcement dates (conditional on deal not being cancelled) in columns (3) and (4). All models use data from non-pending mergers announced between October 31, 2022 (i.e., a year before the *Crispo* decision) and October 31, 2024 (a year after the *Crispo* decision). All specifications include industry and year fixed effects, and columns (2) and (4) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

	(1) <i>Indicator for Cancellation</i> Baseline	(2) <i>With Deal</i> Financials	(3) <i>Days to Complete Deal</i> Baseline	(4) <i>With Deal</i> Financials
Post	0.103*** (3.588)	0.141* (2.309)	-52.71*** (-3.188)	-29.10 (-1.331)
Delaware Choice of Law	-0.0195 (-0.736)	-0.0256 (-0.464)	-18.92 (-1.318)	-11.71 (-0.600)
Post x Delaware Choice of Law	0.123*** (3.286)	0.0569 (0.817)	76.36*** (4.076)	43.56 (1.764)
Ln(Transaction Size)		-0.0262*** (-6.172)		15.90*** (6.416)
Enterprise Value/EBITDA		0.0000170 (1.047)		0.0606*** (59.00)
All Cash Transaction		-0.131*** (-38.33)		-54.56*** (-4.323)
Diversifying Merger		-0.0155** (-2.692)		-6.509** (-2.863)
Observations	189	159	177	151
Adjusted R-squared	0.097	0.163	0.268	0.215
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Appendix Table OA2

Contractual Responses to *Crispo*: Alternative Clustering

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the company can sue on behalf of shareholders for breach of the merger agreement in columns (1) and (2) and for whether the merger agreement explicitly designated the target as its shareholders' agent to recover lost premia in columns (3) and (4). All models use data from mergers announced between October 31, 2022 and October 31, 2024. All specifications include industry and year fixed effects, and columns (2) and (4) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the target's industry in Panel A. We use the wild cluster bootstrap from Cameron et al. (2008) while clustering on the merger agreement's governing law in Panel B. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

Panel A. Clustering at Target Industry

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) <i>Company Right to Sue on Behalf of Shareholders</i>	(3) <i>Explicit Agency Designation</i>	(4) <i>Explicit Agency Designation</i>
	Baseline	With Deal Financials	Baseline	With Deal Financials
Post	0.0531 (0.365)	-0.170 (-0.748)	0.0334 (0.305)	-0.104 (-1.376)
Delaware Choice of Law	0.103 (0.801)	0.0139 (0.0892)	0.0631 (0.904)	-0.0976* (-1.782)
Post $\times$ Delaware Choice of Law	0.316** (2.218)	0.520** (2.418)	0.402*** (4.718)	0.583*** (5.710)
Ln(Transaction Size)		0.0525** (2.579)		0.0520*** (3.817)
Enterprise Value/EBITDA		-0.00005 (-0.212)		0.000257 (1.576)
All Cash Transaction		0.237*** (2.852)		0.0535 (0.688)
Diversifying Merger		0.0729 (1.163)		0.0663 (1.396)
Observations	210	177	210	177
Adjusted R-squared	0.191	0.189	0.202	0.239
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Panel B. Wild Cluster Bootstrap at Merger Governing Law

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) With Deal Financials	(3) <i>Explicit Agency Designation</i>	(4) With Deal Financials
	Baseline		Baseline	
Post	0.0531 (0.359)	-0.170 (-0.597)	0.0334 (1.101)	-0.104 (-1.139)
Delaware Choice of Law	0.103 (1.559)	0.0139 (0.120)	0.0631** (2.363)	-0.0976 (-1.345)
Post x Delaware Choice of Law	0.316*** (3.072)	0.520** (2.371)	0.402*** (7.942)	0.583*** (5.440)
Ln(Transaction Size)		0.0525*** (4.960)		0.0520*** (8.590)
Enterprise Value/EBITDA		-0.00005*** (-3.982)		0.000257*** (39.67)
All Cash Transaction		0.237*** (4.648)		0.0535*** (6.594)
Diversifying Merger		0.0729* (2.032)		0.0663*** (4.276)
Observations	229	195	229	195
Adjusted R-squared	0.194	0.186	0.251	0.288
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Appendix Table OA3

Contractual Responses to *Crispo*: Is There a Top Law Firm Effect?

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the company can sue on behalf of shareholders for breach of the merger agreement in columns (1) and (2) and for whether the merger agreement explicitly designated the target as its shareholders' agent to recover lost premia in columns (3) and (4). All models use data from mergers announced between October 31, 2022 and October 31, 2024. All specifications include industry and year fixed effects, and columns (2) and (4) control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. The ^{***}, ^{**}, and ^{*} denote significance at the 1%, 5%, and 10% levels.

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) <i>With Deal Financials</i>	(3) <i>Explicit Agency Designation</i>	(4) <i>With Deal Financials</i>
Post	0.00870 (0.0959)	-0.366* (-2.393)	0.0420 (1.256)	-0.00112 (-0.0225)
Delaware Choice of Law	0.146** (2.197)	-0.0253 (-0.266)	0.0573** (2.169)	-0.119 (-1.681)
Post x Delaware Choice of Law	0.366*** (4.599)	0.769*** (7.347)	0.453*** (10.32)	0.595*** (7.465)
Top 25 Target Law Firm	0.0455 (0.271)	-0.113 (-1.728)	0.0473 (0.930)	0.0484 (1.222)
Post x Top 25 Target Law Firm	0.135 (0.439)	0.313 (1.138)	-0.0461 (-0.432)	-0.193 (-1.440)
Delaware Choice of Law x Top 25 Target Law Firms	-0.0844 (-0.508)	0.0651 (0.936)	-0.0178 (-0.366)	-0.00994 (-0.245)
Post x Delaware Choice of Law x Top 25 Target Law Firms	-0.182 (-0.590)	-0.464 (-1.680)	-0.0729 (-0.680)	-0.0370 (-0.276)
Ln(Transaction Size)		0.0522*** (4.427)		0.0545*** (11.93)
Enterprise Value/EBITDA		-0.00006** (-3.534)		0.000262*** (76.34)
All Cash Transaction		0.252*** (4.337)		0.0699*** (7.310)
Diversifying Merger		0.0868* (2.248)		0.0721*** (4.125)
Observations	210	177	210	177
Adjusted R-squared	0.178	0.188	0.190	0.247
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Appendix Table OA4

Contractual Responses to *Crispo*: Entropy-Balanced Sample

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the company can sue on behalf of shareholders for breach of the merger agreement in columns (1) and (2) and for whether the merger agreement explicitly designated the target as its shareholders' agent to recover lost premia in columns (3) and (4). All models are run on an entropy-balanced sample, where we balance the first moments of covariates (transaction size, Enterprise Value/EBITDA, and indicators for all cash transaction and diversifying merger) between Delaware deals and other transactions. All models use data from mergers announced between October 31, 2022 and October 31, 2024. All specifications include industry and year firm fixed effects, and columns (2) and (4) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) With Deal Financials	(3) <i>Explicit Agency Designation</i>	(4) With Deal Financials
	Baseline		Baseline	
Post	0.585** (3.497)	0.438 (1.910)	0.00759 (0.145)	-0.107 (-1.270)
Delaware Choice of Law	0.0980* (2.360)	0.0381 (0.505)	0.0506 (1.369)	-0.00163 (-0.0275)
Post x Delaware Choice of Law	0.150** (3.541)	0.252** (3.188)	0.399*** (3.928)	0.483*** (4.231)
Ln(Transaction Size)		0.0604 (1.887)		0.0388** (3.020)
Enterprise Value/EBITDA		-0.000111** (-2.548)		0.000256*** (34.90)
All Cash Transaction		0.0900 (1.054)		0.0783*** (6.127)
Diversifying Merger		-0.0156 (-0.293)		0.0307 (0.680)
Observations	177	177	177	177
Adjusted R-squared	0.317	0.322	0.248	0.269
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Appendix Table OA5

Accounting for Selection into Deals After *Crispo*: Matched Sample

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the company can sue on behalf of shareholders for breach of the merger agreement in columns (1) and (2) and for whether the merger agreement explicitly designated the target as its shareholders' agent to recover lost premia in columns (3) and (4). All models are run on a nearest-neighbor matched sample, where we match deals pre- and post-*Crispo* based on transaction size, Enterprise Value/EBITDA, and indicators for all cash transaction and diversifying merger. All models use data from mergers announced between October 31, 2022 and October 31, 2024. All specifications include industry and year firm fixed effects, and columns (2) and (4) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) <i>Company Right to Sue on Behalf of Shareholders</i>	(3) <i>Explicit Agency Designation</i>	(4) <i>Explicit Agency Designation</i>
	Baseline	With Deal Financials	Baseline	With Deal Financials
Post	0.047 (0.245)	-0.086 (-0.345)	-0.095 (-1.042)	-0.133 (-1.185)
Delaware Choice of Law	0.006 (0.054)	-0.094 (-1.019)	-0.099 (-1.160)	-0.163 (-1.888)
Post x Delaware Choice of Law	0.451** (2.806)	0.585** (3.027)	0.562*** (4.869)	0.646*** (4.932)
Ln(Transaction Size)		0.092*** (9.850)		0.058*** (9.241)
Enterprise Value/EBITDA		0.000** (2.623)		0.000*** (21.318)
All Cash Transaction		0.220*** (7.671)		0.023* (2.191)
Diversifying Merger		0.017 (1.099)		0.068*** (7.471)
Observations	187	173	187	173
Adjusted R-squared	0.263	0.296	0.245	0.292
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Appendix Table OA6

Contractual Responses to *Crispo*: Impact of DGCL Amendment Proposal

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the company can sue on behalf of shareholders for breach of the merger agreement in columns (1) and (2) and for whether the merger agreement explicitly designated the target as its shareholders' agent to recover lost premia in columns (3) and (4). All models use data from mergers announced between October 31, 2022 and October 31, 2024. All specifications include industry and year fixed effects, and columns (2) and (4) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) <i>With Deal Financials</i>	(3) <i>Explicit Agency Designation</i>	(4) <i>With Deal Financials</i>
Post- <i>Crispo</i>	0.0585 (0.280)	-0.0748 (-0.204)	0.00100 (0.0209)	-0.130** (-3.047)
Delaware Choice of Law	0.0930 (1.473)	0.0153 (0.131)	0.0518** (2.232)	-0.115 (-1.797)
Post- <i>Crispo</i> × Delaware Choice of Law	0.307 (1.737)	0.412 (1.252)	0.439*** (6.498)	0.613*** (8.124)
Post-DGCL Proposal	0.188 (1.470)	-0.132 (-0.705)	0.160*** (4.539)	0.0901 (0.843)
Post-DGCL Proposal × Delaware Choice of Law	0.326*** (4.173)	0.601*** (4.767)	0.383*** (8.609)	0.513*** (5.415)
Ln(Transaction Size)		0.0544*** (5.281)		0.0529*** (6.631)
Enterprise Value/EBITDA		-0.000015 (-0.993)		0.000291*** (27.08)
All Cash Transaction		0.232*** (4.940)		0.0444*** (5.828)
Diversifying Merger		0.0681* (1.955)		0.0603*** (4.066)
Observations	210	177	210	177
Adjusted R-squared	0.190	0.184	0.201	0.239
Industry Fixed Effects	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes

Appendix Table OA7

Con Ed Event Study for Targets in New York Deals

This table presents the results of an event study using the Fama-French three-factor asset pricing model. Panel A shows the cumulative abnormal returns over different event windows for targets in mergers governed by New York law, for deals that had been announced but not completed or withdrawn as of the date *Con Ed* was announced. Panel B shows the coefficient for New York choice of law in a difference-in-differences analysis where the dependent variable is cumulative abnormal returns for targets over different event windows and the control group is mergers that did *not* choose New York as governing law and had similarly been announced (but not completed or withdrawn) before the Second Circuit's decision in *Con Ed*. Standard errors in all panels are robust, and for Panel B are clustered at the level of the merger agreement's governing law. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

Panel A. Stock Price Effect of <i>Con Ed</i> for Targets in Mergers Governed by NY Law					
(1)	(2)	(3)	(4)	(5)	(6)
AR[0]	CAR[0,+1]	CAR[0,+2]	CAR[-1,+1]	CAR[-2,+2]	CAR[0,5]
0.073	-0.254	-0.715***	-0.276	-0.411	-0.720*
(0.29)	(-0.73)	(-3.11)	(-0.46)	(-0.76)	(-2.00)
N=17. <i>t</i> -statistics in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.					

Panel B. Difference-in-Differences Analysis: Coefficient for NY Choice of Law (Targets)					
(1)	(2)	(3)	(4)	(5)	(6)
AR[0]	CAR[0,+1]	CAR[0,+2]	CAR[-1,+1]	CAR[-2,+2]	CAR[0,5]
-0.383*	-0.682***	-0.582***	-1.067***	-0.957**	-0.099
(-2.10)	(-3.94)	(-3.13)	(-3.40)	(-2.47)	(-0.83)
N=65. <i>t</i> -statistics in parentheses. * $p < 0.10$, ** $p < 0.05$, *** $p < 0.01$.					

Appendix Table OA8

Merger Premia Decreased for New York Deals After *Con Ed*

This table presents the results of an ordinary least squares (OLS) linear regression model where the dependent variable is the one-day merger premium in columns (1) and (2), five-day merger premium in columns (3) and (4), and thirty-day merger premium in columns (5) and (6). All models use data from mergers announced between October 12, 2004 (i.e., a year before the *Con Ed* decision) and October 12, 2006 (a year after the *Con Ed* decision). All specifications include industry and year fixed effects, and columns (2), (4), and (6) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. All dependent variables are winsorized at the 2.5% level. The ***, **, and * denote significance at the 1%, 5%, and 10% levels.

	(1) One Day Premium Baseline	(2) With Deal Financials	(3) Five Day Premium Baselined	(4) With Deal Financials	(5) Thirty Day Premium Baseline	(6) With Deal Financials
Post	2.875 (1.008)	3.586 (1.679)	1.009 (0.332)	1.495 (0.617)	0.375 (0.0924)	2.100 (0.572)
NY Choice of Law	4.018*** (3.444)	8.396*** (10.78)	3.505*** (4.455)	6.594*** (9.678)	0.181 (0.187)	2.781* (2.021)
Post × NY Choice of Law	-8.957*** (-6.543)	-12.26*** (-12.95)	-7.970*** (-5.359)	-10.70*** (-14.80)	-5.689*** (-3.069)	-9.790*** (-8.540)
Ln (Transaction Size)		-2.760*** (-5.507)		-1.719*** (-3.767)		-1.698*** (-3.884)
Enterprise Value/EBITDA		0.00146*** (6.032)		0.00198*** (8.318)		0.00392*** (11.67)
Diversifying Merger		-1.442 (-0.831)		-1.923 (-1.326)		-5.064** (-2.228)
All Cash Transaction		1.465 (0.554)		2.369 (0.903)		2.530 (0.948)
Observations	462	394	462	394	462	394
Adjusted R-squared	0.069	0.108	0.065	0.092	0.090	0.127
Industry Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes

Appendix Table OA9

Controlling for Buyer Type and Reverse Termination Fees

This table presents the results of a linear probability regression model where the dependent variable is an indicator for whether the company can sue on behalf of shareholders for breach of the merger agreement in columns (1), (2), (5), and (6), and for whether the merger agreement explicitly designated the target as its shareholders' agent to recover lost premia in columns (3), (4), (7), and (8). All models use data from mergers announced between October 31, 2022 (i.e., a year before the *Crispo* decision) and October 31, 2024 (a year after the *Crispo* decision). All specifications include industry and year fixed effects, and columns (2), (4), (6), and (8) further control for transaction size, the enterprise value/EBITDA multiple, and indicators for whether the deal is all cash and a diversifying merger. All variables are described in Table 1. All standard errors are robust and clustered at the level of the merger agreement's governing law. The ^{***}, ^{**}, and ^{*} denote significance at the 1%, 5%, and 10% levels.

	(1) <i>Company Right to Sue on Behalf of Shareholders</i>	(2) <i>Company Right to Sue on Behalf of Shareholders</i>	(3) <i>Explicit Agency Designation</i>	(4) <i>Explicit Agency Designation</i>	(5) <i>Company Right to Sue on Behalf of Shareholders</i>	(6) <i>Company Right to Sue on Behalf of Shareholders</i>	(7) <i>Explicit Agency Designation</i>	(8) <i>Explicit Agency Designation</i>
Post	0.06 (0.40)	-0.10 (-0.37)	0.03 (1.14)	-0.11 (-1.17)	0.08 (0.54)	-0.06 (-0.22)	0.01 (0.22)	-0.15 (-1.66)
Delaware Choice of Law	0.11 (1.68)	0.05 (0.42)	0.06** (2.39)	-0.10 (-1.41)	0.11 (1.71)	0.06 (0.42)	0.05 (1.74)	-0.12 (-1.83)
Post $\times$ Delaware Choice of Law	0.30*** (3.12)	0.40 (1.87)	0.40*** (7.90)	0.59*** (5.33)	0.28** (2.68)	0.37 (1.72)	0.44*** (7.15)	0.64*** (6.12)
Reverse Termination Fee	-0.11*** (-4.87)	-0.15*** (-5.75)	-0.00 (-0.00)	0.01 (1.56)				
Financial Buyer					-0.08* (-2.07)	-0.19*** (-5.32)	0.08** (2.73)	0.07*** (7.43)
Ln(Transaction Size)		0.05*** (5.50)		0.05*** (9.03)		0.06*** (5.03)		0.05*** (10.75)
Enterprise Value/ EBITDA		-0.00*** (-4.71)		0.00*** (42.35)		-0.00*** (-4.19)		0.00*** (51.00)
All Cash Transaction		0.26*** (5.31)		0.05*** (6.55)		0.29*** (5.88)		0.03** (3.70)
Diversifying Merger		0.09** (3.08)		0.07*** (4.32)		0.11** (2.96)		0.05** (3.23)
Observations	210	177	210	177	210	177	210	177
Adjusted R-squared	0.20	0.20	0.20	0.23	0.19	0.20	0.20	0.24
Industry Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Year Fixed Effects	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

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