

# Caremark Merger Litigation

**COURT:** Delaware Court of Chancery (New Castle County)  
**CASE NUMBER:** C.A. No. 2635-N  
**CASE CONTACTS:** Gerald H. Silk, Salvatore J. Graziano, Mark Lebovitch

This is a shareholder class action against the directors of Caremark RX, Inc. ("Caremark") for violations of their fiduciary duties arising from their approval and continued endorsement of a proposed merger with CVS Corporation ("CVS") and their refusal to consider fairly an alternative transaction proposed by Express Scripts, Inc. ("Express Scripts"). On December 21, 2006, BLB&G commenced this action on behalf of the Louisiana Municipal Police Employees' Retirement System and other Caremark shareholders in order to force the Caremark directors to comply with their fiduciary duties and otherwise obtain the best value for shareholders.

In a landmark decision issued on February 23, 2007, the Delaware Court of Chancery ordered the defendants to disclose additional material information that had previously been withheld, enjoined the shareholder vote on the CVS transaction until the additional disclosures occurred, and granted statutory appraisal rights to Caremark's shareholders. The Court also heavily criticized the conduct of the Caremark board of directors and, although declining to enjoin the shareholder vote on procedural grounds, noted that subsequent proceedings will retain the power to make shareholders whole through the availability of money damages.

When asked for comment on the Court's ruling, BLB&G partner Jerry Silk stated: "We view this as a significant victory for Caremark's shareholders, achieved through the efforts of committed institutional investors, who refused to sit idly by while the Caremark board attempted to force a no-premium deal on its shareholders."

Mr. Silk's partner Salvatore Graziano added: "We appreciate the Court's prompt review of these facts and circumstances and willingness to postpone (twice) the proposed timetable for the CVS-Caremark transaction so that shareholders can have a more informed vote. We continue to monitor this case with that goal paramount."

To date, the lawsuit has forced CVS to increase the consideration offered to Caremark shareholders by a total of \$7.50 per share in cash (over \$3.3 billion in total), caused Caremark to issue a series of additional material disclosures, and twice postponed the shareholder vote to allow shareholders sufficient time to consider the new information.

On March 16, 2007, Caremark shareholders voted to approve the revised offer by CVS.

## Background of the Action

On November 1, 2006, CVS and Caremark announced that their respective boards of directors had entered into an agreement to merge the two companies. The merger agreement contained numerous "deal protection" devices intended to ensure that the shareholders approve the deal. On December 18, 2006, Express Scripts publicly indicated its willingness to buy Caremark for a price offering \$5 billion in value to Caremark shareholders above the deal offered by CVS. The initial complaint was filed on December 21, 2006 and the Amended Class Action Complaint was filed on January 5, 2007.

The Action, brought on behalf of a class of similarly situated Caremark shareholders, seeks to hold the directors of Caremark accountable for alleged breaches of fiduciary duties owed to the Class in connection with the proposed CVS/Caremark merger. Specifically, the Amended Complaint alleges that the Caremark directors breached their fiduciary duties to the Caremark shareholders by putting their own personal interests ahead of those of the Class in the sale of

Caremark and by failing to maximize shareholder value in that sale. The Amended Complaint further alleges that as a result of the alleged breaches of duty, Caremark agreed to be acquired by CVS for slightly over \$20 billion - a price that offers zero premium to Caremark's shareholders. Further, just one day after the Express Scripts offer, on December 19, 2006, Caremark and CVS issued a preliminary joint proxy statement announcing that the Caremark directors unanimously recommended to the Caremark shareholders the adoption of the merger agreement and the approval of the merger with CVS, pursuant to the terms as announced on November 1, 2006.