

## Caremark Shareholder Vote Temporarily Enjoined

In a very brief letter opinion issued February 13, 2007, Chancellor Chandler enjoined the February 20 meeting of Caremark shareholders to vote on the merger with CVS until at least March 9. This is a rare outcome and turns on the Chancellor's finding that Caremark's February 12 supplemental disclosures contained material information that the shareholders would not have an adequate opportunity to consider fully before the scheduled meeting.

The Court's finding centered on two disclosures. First, Caremark "has considered, on at least three separate occasions, potential transactions with Express Scripts to be highly relevant". The Court concluded the information was particularly important because of Caremark's "protestations that antitrust difficulties loom so large as to prevent the board from *even discussing* an offer with an admittedly higher dollar offer". Second, Caremark also disclosed that, were any merger to be consummated, "other plaintiffs presently engaged in derivative litigation against the defendant directors based on backdated option grants might lose standing to assert claims".

Another hearing-- on the substantive claims seeking to enjoin the transaction-- is scheduled for February 16. We call your attention to one item of note. We are sometimes asked to provide advice on the minimum lead time between a corporation's supplemental disclosures and the meeting itself. Although the instant case was decided on an abbreviated TRO record and, contextually, in a hotly contested takeover situation, we note that the Chancellor found, on the facts before him, that 8 days (with an intervening holiday) was an insufficient interval. The consolidated cases are *Louisiana Municipal Police Employees' Retirement Sys. v. Crawford, et al.*, Civil Action No. 2635-N and *Express Scripts, Inc., et al v. Crawford, et al.*, Civil Action No. 2663-N.

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Jim Holzman  
Prickett, Jones & Elliott