



Purchasers of Cardizem CD Products, as defined below, may be eligible to register a claim for recovery against the Settlement. This Notice contains information that will help you determine whether you are eligible to participate in the Settlement, and if so, how to register a claim.

YOU ARE HEREBY NOTIFIED, pursuant to an Order of the United States District Court for the Eastern District of Michigan, that a proposed settlement (the “Settlement”) of the above-captioned Litigation has been reached with Defendants Aventis Pharmaceuticals Inc. (formerly known as Hoechst Marion Roussel, Inc.) (“Aventis”), Aventis S.A. (formerly known as Hoechst Aktiengesellschaft), Carderm Capital L.P. and Andrx Corporation (“Andrx”) (collectively, the “Defendants”), by the Attorneys General of all 50 states, the Commonwealth of Puerto Rico and the District of Columbia, (the “States”) and Private Plaintiffs’ Counsel on behalf of consumers and Third Party Payers. The Settlement has been granted preliminary approval by the Court.

This Notice is not an expression of any opinion by the Court as to the merits of the claims or defenses by any of the parties to the Litigation. The purpose of this Notice is to summarize the Litigation, to inform you of the Settlement, and to notify you of the rights and options you may have in connection with the Settlement. The provisions of this Notice are qualified and subject in their entirety to the terms of the Settlement Agreement.<sup>1</sup>

In general, if you bought Cardizem® CD or its generic version in the United States (including Puerto Rico) at any time during the Class Period and you are a resident of one of the 50 states, the Commonwealth of Puerto Rico or the District of Columbia, you do not need to take any action to remain in this Litigation and this Settlement. If you choose to, you may exclude yourself from the Settlement (as described in Sections III(B) and III(C) of this Notice), or you may remain in the Settlement and comment on, support or object to the terms of the Settlement (as described in Sections III(A) and V of this Notice).

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<sup>1</sup> Please see Section VI of the Notice for instructions on how to obtain a copy of the Settlement Agreement.

**If you want to participate in and register a claim for recovery concerning your purchases of Cardizem CD Products during the Class Period, you must read Sections III and IV of this Notice to determine if you are eligible to participate in the Settlement, and if so, how to register a claim for a cash recovery. If you remain in the Litigation and the Settlement, you will be bound by the Court’s final judgment approving the Settlement whether or not you register a claim for a cash recovery.**

If you do not want to participate in the Litigation or the Settlement or to be bound by the judgment, you must take timely action to exclude yourself. **Section III (B) of this Notice explains how to exclude yourself from this Litigation and the Settlement.**

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## **Definitions**

To help you better understand this Notice and your rights in the Settlement, here are definitions of some of the more important terms that appear in this Notice. Capitalized terms used but not defined in this Notice have the meanings given to them in the Settlement Agreement:

**Cardizem CD Products:** the brand-name drug Cardizem® CD and/or its AB3-rated generic equivalents. Generic prescriptions may be called Cartia XT, Diltiazem CD, or Diltiazem Hydrochloride Extended Release Capsules. Ask your doctor or pharmacist if you are not sure whether you are taking, or took at any time during the Class Period, Cardizem® CD in its brand-name or generic form.

**Consumer Settlement Fund:** the approximately \$25 million fund for consumers that will be created from the money paid by Defendants to settle this Litigation. The money will be available for distribution to individuals who purchased Cardizem CD Products in any State during the Class Period.

**Consumer Settlement Class:** consumer members of the Settlement Class, meaning consumers who paid all or part of the purchase price of Cardizem CD Products in the United States (including Puerto Rico) during the period January 1, 1998 through January 28, 2003.

**Court:** the United States District Court for the Eastern District of Michigan, in which various lawsuits comprising the Litigation are consolidated.

**Litigation:** the lawsuit filed and/or joined by the States and the lawsuits filed by private counsel on behalf of consumers and Third Party Payers against the Defendants, variously alleging violations of federal antitrust laws and state antitrust, consumer protection, unfair competition and other laws, which are settled by the Settlement described in this Notice.

**Private Plaintiffs' Counsel:** various law firms around the country that filed the lawsuits named in the caption of this Notice on behalf of consumers and Third Party Payers. Private Plaintiffs' Counsel represent Third Party Payers in the Settlement.

**States:** the 50 states of the United States of America, the District of Columbia and the Commonwealth of Puerto Rico, all of which have joined in the Settlement on behalf of their state agencies and the consumers residing in their respective states.

**Third Party Payers:** entities, primarily medical insurance companies, that paid all or part of the purchase price of Cardizem CD Products for their members.

## I. LITIGATION BACKGROUND

Cardizem® CD is a once-a-day calcium channel blocker whose active ingredient is the chemical compound diltiazem hydrochloride. Cardizem® CD is used to treat hypertension (high blood pressure) and angina (heart pains). Defendant Aventis was the manufacturer of brand-name Cardizem® CD in the United States. Defendant Andrx is a manufacturer of generic drugs, including a generic version of Cardizem® CD called Cartia XT.

The principal allegations in the Litigation arise from actions occurring in and around September 1997. In September 1997, Aventis was the only company approved by the U.S. Food and Drug Administration (the “FDA”) to sell Cardizem® CD in the United States. At that time, Andrx had an application to sell a generic version of Cardizem® CD pending before the FDA. Prior to September 1997, Aventis had filed suit against Andrx, alleging that Andrx’s generic product infringed Aventis’ Cardizem® CD patents. Before Andrx received final approval from the FDA to sell its generic version of Cardizem® CD, and while Aventis’ lawsuit remained pending, Andrx and Aventis entered into an agreement near the end of September 1997. In the Litigation, plaintiffs alleged that through this agreement, Andrx agreed to keep its generic version of Cardizem® CD out of the marketplace in exchange for \$10 million for every three months that the generic was not available, plus an additional \$60 million for each year the generic was not available if Andrx prevailed in the patent lawsuit against Aventis. The agreement went into effect in July 1998, while Aventis’ patent infringement action against Andrx remained pending, and was terminated in June 1999, when the patent lawsuit was resolved by the parties. Aventis made payments to Andrx totaling over \$89 million under the agreement.

In August 1998, consumers and insurance companies began filing lawsuits against Andrx and Aventis alleging that their agreement illegally deprived consumers of the option to purchase a generic version of Cardizem® CD. The lawsuits claimed that consumers and third party payers, primarily medical insurance companies, had paid more for Cardizem® CD than they would have if a generic version of Cardizem® CD had been available. These suits were filed in

various state courts around the country, but most of the cases were transferred to federal court and eventually consolidated into one pretrial proceeding before the Court in Michigan.

In May 2001, 14 states filed their own lawsuit against the Defendants alleging that as a result of the agreement between Aventis and Andrx, consumers and state agencies were deprived of the option to purchase generic versions of Cardizem® CD. A few months later, 15 additional states joined the Litigation. The 29 litigating states and the Private Plaintiffs' Counsel worked together to prosecute the Litigation for a year and a half.

Although the Plaintiffs believe that their claims have merit and that the evidence developed to date supports the claims, they also recognize the expense and risk of continuing to prosecute the Litigation through trial and appeals, and the benefit of getting money more quickly. Defendants denied and continue to deny the allegations of the States and private parties and believe they have meritorious defenses. At the same time, Defendants also are quite aware of the expense and risks inherent in complex litigation. Therefore, the Parties agreed to participate in a Court-approved mediation in June 2002 to attempt to resolve this Litigation. After extended discussions and intense negotiations, the Defendants, the States and Private Plaintiffs' Counsel reached the Settlement discussed in this Notice. The States and Private Plaintiffs' Counsel consider the Settlement to be fair, reasonable, and adequate, and in the best interests of all consumers and Third Party Payers whom they represent and who comprise the Settlement Class. This Notice alerts you to the Settlement and its significant terms, to assist you in determining whether you want to object to or exclude yourself from the Settlement or to remain part of the Settlement Class.

## **II. SUMMARY OF THE PROPOSED SETTLEMENT**

The Settlement described in this Notice, among other things, resolves the Litigation brought by the States and Private Plaintiffs' Counsel on behalf of consumers and Third Party Payers, as well as four pending State Actions, against the Defendants. The Court granted preliminary approval of the Settlement on [January 28,] 2003. This means that the Settlement is considered worthy of your consideration. The Settlement is not yet final. If enough

consumers or Third Party Payers object to the terms of the Settlement or elect to exclude themselves, the Settlement will not be finalized and no money will be distributed. This Notice is meant to give you the information that will allow you to decide if you want to accept and participate in the Settlement, object to the Settlement or exclude yourself from the Settlement.

### III. The Settlement's Primary Terms

In general, the Settlement requires Defendants to pay approximately \$80 million in return for the Plaintiffs' dismissal of their Litigation, and the release of all claims that were or could have been asserted in that Litigation against the Defendants, forever. In other words, once the Settlement is final, no member of the Consumer Settlement Class may bring an antitrust, consumer protection or similar lawsuit against the Defendants for claims relating to the circumstances or allegations involved in the Litigation.

The Plaintiffs propose to allocate the Settlement as follows:

1. The bulk of the \$80 million will be divided between a Consumer Settlement Fund and a Third Party Payer Settlement Fund. The Consumer Settlement Fund will contain approximately \$25 million and the Third Party Payer Settlement Fund will contain approximately \$30 million. These Settlement Funds will be used to pay claims of consumers and Third Party Payers who purchased and/or paid for Cardizem CD Products in any State during the Class Period and the administrative costs of those funds.
2. The Consumer Settlement Fund and the Third Party Payer Settlement Fund will each bear the costs of its own claims process. The total costs and expenses of administration will only be determined after the fact. However, it is estimated that the costs to administer the Consumer Settlement Fund may ultimately reach \$5.54 million.
3. The States will receive \$7 million to pay claims of state agencies, including their respective Medicaid agencies, relating to their purchases of



Cardizem CD Products during the Class Period. The \$7 million includes \$2.5 million to pay the attorneys' fees of the 29 States that brought the case.

4. The Private Plaintiffs' Counsel will ask the Court to approve legal fees and expenses totaling approximately \$16 million.
5. Up to \$1.75 million will be spent on the publication of this Notice and corresponding notices to Third Party Payers, and other costs associated with informing consumers and Third Party Payers of this Settlement and their rights.

After all administrative costs, litigation costs and valid and timely claims are paid, there may be funds left in the Consumer Settlement Fund. The Court will retain the discretion to determine how and to whom any such unclaimed funds will be distributed. Such a distribution may include the payment of any unclaimed funds to political subdivisions of the Plaintiff States and/or to one or more non-profit or charitable organizations, to fund programs that benefit the health care needs of users of Cardizem CD Products.

#### IV. Distribution of the Consumer Settlement Fund

The Consumer Settlement Fund will be distributed among eligible members of the Consumer Settlement Class who submit claims against the Settlement. If you are an eligible claimant, the exact amount that you will receive will depend on three factors:

- V. The total number of eligible claimants;
- VI. The year(s) in which you purchased Cardizem CD Products; and
- VII. Whether you had any type of prescription drug insurance.

The States have concluded that consumers who had no prescription drug coverage and purchased Cardizem CD Products in 1998 or 1999 were most significantly impacted by the alleged delay of generic entry into

the Cardizem® CD market alleged in the Litigation. Consequently, such consumers will receive the highest level of award from the Consumer Settlement Fund. All other consumers will be awarded payments from the Consumer Settlement Fund at a lower rate.

#### VIII. **PARTICIPATION OPTIONS FOR SETTLEMENT CLASS MEMBERS**

If you paid all or part of the cost of your Cardizem CD Products dispensed in any of the States from January 1, 1998 through January 28, 2003, you are currently a member of the Consumer Settlement Class.

The Consumer Settlement Class is represented in this Settlement by the States. As a member of the Consumer Settlement Class, you have two options:

1. You may remain a member of the Consumer Settlement Class; or
2. You may exclude yourself from the Consumer Settlement Class.

The following sections describe the ramifications of your choice.

#### IX. **If You Choose to Remain in the Consumer Settlement Class:**

X. **You do not have to take any action to remain a member of the Consumer Settlement Class.** If the Settlement is approved by the Court, then you will be bound by the judgment entered by the Court when the Settlement becomes final, your claims against these Defendants will be forever released, and you will be eligible to register a claim for recovery from the Consumer Settlement Fund. **You still must actually submit register a valid and timely claim form to receive money from this Settlement. You may use the form included at the end of this Notice.**

XI. You may (but are not required to) file written comments in favor of or in opposition to the Settlement or the fee and cost applications.

XII. Any written comments on the Settlement or fee and cost applications (i) must include your name, address, telephone number, and the name and number of the Litigation (In re Cardizem CD Antitrust Litigation, MDL No. 1278); (ii) must be signed by you; and (iii) must be postmarked on or before [September 23, 2003]. Written comments, letters, and other materials postmarked after this date will not be considered by the Court.

XIII. Written comments must be sent to the Clerk of the United States District Court for the Eastern District of Michigan, the Cardizem CD Settlement Administrator, the State Liaison Counsel, the Private Plaintiffs' Counsel, and the Defendants' counsel (collectively, the "Participants"). The Participants' addresses are listed in Appendix A to this Notice.

XIV. You may appear and be heard at the Court's hearing to consider the final approval of the Settlement (the "Settlement Hearing"). The procedures for making an appearance at the Settlement Hearing are described in Section V of this Notice.

**XV. If You Choose to Exclude Yourself from the Consumer Settlement Class:**

XVI. You will not be bound by the Court's judgment finally approving the Settlement, your claims against these Defendants will not be released, and you will retain the option to pursue your claims, to the extent otherwise permitted by law and subject to all applicable limitations, on an individual basis at your own expense against the Defendants, and the Defendants will retain all defenses against and counterclaims to any such claims.

XVII. **You will not be eligible to register a claim with or to receive any money from the Consumer Settlement Fund.**

XVIII. You will not be eligible to comment on the fairness, adequacy and reasonableness of the Settlement, nor will you be eligible to appear and be heard at the Settlement Hearing.

**XIX. How to Exclude Yourself from the Settlement Class**

XX. To exclude yourself from the Consumer Settlement Class, you must submit a valid and timely written request for exclusion. Your exclusion request must include your name, address, telephone number, and the name and number of this Litigation (In re Cardizem CD Antitrust Litigation, MDL No. 1278), and must be signed by you. You may use the form included at the end of this Notice.

XXI. You must submit your request for exclusion to the Cardizem CD Settlement Administrator at the address set forth in Appendix A to this Notice.

XXII. Your exclusion request must be postmarked by [September 22, 2003]. If your request for exclusion is not postmarked by [September 22, 2003], or does not include the information required by this Section III(C), it will not be valid, and you will remain a member of the Consumer Settlement Class. Anyone who does not act in the manner provided in this Section shall be deemed to have waived and forever foreclosed his or her right to exclude himself or herself from the Settlement.

**XXIII. REGISTERING A CLAIM**

**XXIV. Who May Register a Claim**

If you choose to remain a member of the Consumer Settlement Class, you are eligible to register a claim with the Consumer Settlement Fund for recovery of money related to your purchases of Cardizem CD Products from January 1, 1998

to January 28, 2003. If you choose to exclude yourself from the Settlement, you are not eligible to register a claim.

You can submit a claim on behalf of a deceased claimant, but only if we may contact you also submit for documentation that confirms shows your authority to can act on behalf of the deceased claimant.

#### XXV. Prescription Drug Coverage and Eligibility to Participate in the Settlement

You may submit a claim whether or not you have or had any kind of prescription drug coverage. If you did not have any prescription drug coverage, you may submit a claim based on the full amount that you paid for your Cardizem CD Products. If you did have some type of prescription drug coverage during the Class Period, you may submit a claim based on any amount that you paid that was not reimbursed to you (such as your co-payment). You do not have to, and may not, make a claim with respect to the amount that your insurance company paid for your Cardizem CD Products. Your insurance company will make that claim itself through the Third Party Payer Settlement Fund.

#### XXVI. How to Register a Claim

If you are eligible and you wish to register a claim, you can do so by using the form at the end of this Notice or by contacting the Cardizem CD Settlement Administrator:

6. By calling \_\_\_\_\_; or
2. By sending a letter to the Cardizem CD Settlement Administrator at the address set forth in Appendix A to this Notice; or
7. By visiting the Settlement website at \_\_\_\_\_.

Any questions regarding the claims process should be directed to the Cardizem CD Settlement Administrator as soon as possible to ensure that your claim is registered by September 23, 2003. **Any claims registered after the September 23, 2003 deadline will not be considered.**

#### XXVII. HEARING TO CONSIDER FINAL APPROVAL OF THE PROPOSED SETTLEMENT

The Court will consider final approval of the Settlement, including the fee and cost petitions of the States and Private Plaintiffs' Counsel, on \_\_\_\_\_, in the Courtroom of the Honorable Nancy G. Edmunds, at the United States District Court for the Eastern District of Michigan, 231 West Lafayette Boulevard, Detroit, Michigan 48226. The Settlement Hearing date may be changed without further written or published notice. **You are not required to attend the Settlement Hearing.**

Any member of the Consumer Settlement Class who wishes to may appear and be heard at the Settlement Hearing. However, to do so, you must adhere to the following procedure:

XXVIII. You must file with the Clerk of the United States District Court for the Eastern District of Michigan, at the address appearing at Appendix A to this Notice, (a) a notice of your intention to appear at the Settlement Hearing (the "Notice of Appearance"), (b) a statement (the "Statement") indicating the basis for your support of or opposition to the Settlement or any other matter that may be taken up by the Court in connection with the Settlement, and (c) any documentation in support of your position.

XXIX. Complete copies of the Notice of Appearance, the Statement and the supporting documentation, as well as any other papers or briefs that you may file with the Clerk, must also be served, either in person or by mail, upon the Participants at the addresses listed in Appendix A to this Notice.

XXX. The Notice of Appearance, the Statement and the supporting documentation must be filed with and received by the Court on or before [September 23, 2003], and must be served in person on, or mailed and postmarked to, the Participants on or before [September 23, 2003]. If these materials are not filed and served by this date, then the Notice of Appearance, the Statement and the supporting documentation will not be considered by the Court, and you will not be permitted to be heard at the Settlement Hearing. Only persons who have filed and served valid and

timely Notices of Appearance (with the accompanying Statement and supporting documentation) shall be entitled to be heard at the Settlement Hearing.

**XXXI. ADDITIONAL INFORMATION**

This Notice is only a summary of the Litigation and the Settlement. More detailed information, including copies of the complaints, the Settlement Agreement, the papers filed in support of the preliminary approval of the Settlement, and the Court's order preliminarily approving the Settlement, may be obtained at your own expense upon request by contacting the Cardizem CD Settlement Administrator at the address listed in Appendix A to this Notice or by going to the Settlement website at: [www.\\_\\_\\_\\_\\_.com](http://www._____.com). Should you have any questions with respect to this Notice or the Settlement, you should direct them to the Cardizem CD Settlement Administrator, the State Liaison Counsel, the Attorney General of your state, or if you choose, your own attorney.

PLEASE DO NOT CONTACT THE COURT, THE CLERK'S OFFICE OR COUNSEL FOR DEFENDANTS FOR INFORMATION OR TO ANSWER SUCH QUESTIONS.

BY ORDER OF THE COURT

THE HONORABLE NANCY G. EDMUNDS

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

**Appendix A– Participants’ Addresses**

**Clerk of the United States District Court  
for the Eastern District of Michigan:**

Clerk of the United States District Court  
for the Eastern District of Michigan,  
Southern Division  
Theodore Levin U.S. Courthouse  
231 West Lafayette Boulevard  
Detroit, Michigan 48226

**State Liaison Counsel:**

Paul F. Novak, Esq.  
Assistant Attorney General  
STATE OF MICHIGAN  
Consumer Protection Division  
Antitrust Section  
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Robert Hubbard, Esq.  
Director of Litigation  
Office of the Attorney General  
STATE OF NEW YORK  
Antitrust Bureau  
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**Counsel for Defendant Andrx:**

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SOLOMON ZAUDERER ELLENHORN  
FRISCHER & SHARP  
45 Rockefeller Plaza  
New York, NY 10111

**Counsel for Defendant Aventis:**

Joseph Rebein, Esq.  
SHOOK, HARDY & BACON LLP  
One Kansas City Place  
1200 Main Street  
Kansas City, MO 64105

**Cardizem CD Settlement Administrator:**

In re Cardizem CD Antitrust Litigation  
Consumer Settlement Administrator  
P.O. Box \_\_\_\_\_  
\_\_\_\_\_

**Private Plaintiffs’ Counsel:**

Stephen Lowey, Esq. and  
Richard W. Cohen, Esq.  
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& SELINGER, P.C.  
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BERMAN DEVALERIO PEASE  
TABACCO BURT & PUCILLO  
425 California Street, Suite 2025  
San Francisco, CA 94104



## Consumer Claim Registration or Opt-Out Form

You may register a claim for the Settlement or opt out of the Settlement in any of these ways:

- (1) go to the website: www.\_\_\_\_\_.com; *or*
- (2) call 1-800-\_\_\_\_\_; *or*
- (3) complete this form and mail it to the Cardizem Consumer Settlement Administrator at the address provided below.

### To Complete this form:

1. Fill out Section 1.
2. If you want to be included in the Settlement Class and register a claim, fill out Section 2 and mail this form by September 23, 2003.
3. If you want to be excluded from the Settlement Class and give up the right to get money from the Settlement Fund, fill out Section 3 and mail this form by September 22, 2003.
4. Sign this form at the bottom and mail it to:  
**Cardizem Consumer Settlement Administrator**  
**P.O. Box \_\_\_\_\_**  
**City, State 12345 \_\_\_\_\_**  
**1-800-123-45671-800- \_\_\_\_\_**
5. Someone other than the Cardizem CD® purchaser can fill out this form on behalf of the purchaser. In that case, the person filling out the form should complete Section 4.

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### Section 1 - Everyone complete this section

Cardizem® CD Purchaser Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Did you fill a prescription for Cardizem® CD or its generic between January 1, 1998 and January 28, 2003?

Yes \_\_\_\_ No \_\_\_\_

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### Section 2: Only complete this section if you want to **remain** in the class and **register a claim**.

When between January 1, 1998 and January 28, 2003 did you buy Cardizem CD or its generic?

From \_\_\_\_\_

To \_\_\_\_\_

Please provide the name, (and address and phone number, if possible) of the doctor who prescribed Cardizem CD or its generic:

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Did you have insurance that included prescription drug coverage? (If your prescription drug coverage changed while on Cardizem® CD, please explain on the back of this form)

Yes \_\_\_\_\_ No \_\_\_\_\_

About how much did you pay per month for your prescription of Cardizem® CD or its generic? (only include amounts that were not reimbursed to you by your prescription drug insurer)

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If the amount you paid for Cardizem® CD or its generic changed, please indicate on the back of this form the various amounts you paid per month and which months you paid them.

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**Section 3** - Only complete this section if you want to **opt out and exclude** yourself from the class

I choose to opt out and be excluded from the Settlement.

Yes \_\_\_\_\_ No \_\_\_\_\_

I understand that by excluding myself, I become ineligible to get money from the Settlement Fund.

Yes \_\_\_\_\_ No \_\_\_\_\_

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**Section 4** - only complete if you are filing this form on someone else's behalf

Your name: \_\_\_\_\_

Your relationship to the Cardizem® CD purchaser:

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Is the Cardizem® purchaser deceased?

Yes \_\_\_\_\_ No \_\_\_\_\_

**Note:** If you are submitting a claim on behalf of a deceased claimant, we may contact you must also submitfor documentation that confirmsshow your authority to can act on behalf of that person.

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**[FOR PAPER CLAIM FORMS:]**

**Please sign and date:**

I certify under penalty of perjury that the foregoing is, to the best of my knowledge, true and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

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**[FOR CLAIMS SUBMITTED VIA THE WEB SITE:]**

By submitting this information electronically, the sender is certifying under penalty of perjury that the information submitted is true and correct, and that the sender is the claimant or someone with permission to act on the claimant's behalf.

**If you have questions about how to fill out any of the blanks on this form, please call the Settlement Administrator at 1-800-\_\_\_\_\_**