

BEFORE THE UNITED STATES JUDICIAL PANEL
ON
MULTIDISTRICT LITIGATION

**In re: DePuy Orthopaedics, Inc. ASR Hip Implant
Products Liability Litigation**

MDL NO. 2197

MARY BANKS and BETTY COLSTON

Plaintiffs

v.

N.D. Texas C.A. No. 3:11-cv-00718-L

DEPUY ORTHOPAEDICS, INC. et al,

MOTION TO VACATE CONDITIONAL TRANSFER ORDER 34

Plaintiffs, MARY BANKS and BETTY COLSTON, move to vacate Conditional Transfer Order No. 34 (“CTO-34”), issued in *MARY BANKS and BETTY COLSTON v. DEPUY ORTHOPAEDICS, INC., KELLY ORTHOPAEDIC SALES, LP, and KOS MANAGEMENT COMPANY, LLC*, Case No. 3:11-cv-00718-L pending in the Northern District of Texas, by this Judicial Panel on Multidistrict Litigation (the “Panel”) which conditionally transferred this action to MDL 2197-In Re: DePuy Orthopaedics, Inc. ASR Hip Implant Products Liability Litigation and in support of such motion to vacate, state as follows:

Pursuant to 28 U.S.C. § 1407, the purpose of multidistrict litigation is, in part, to promote “the just and efficient conduct of litigation.” In the present MDL 2197, issuance of a conditional transfer order has often had the opposite effect on the pending litigation because Defendant, DePuy Orthopaedics, Inc., has misrepresented this Panel’s instructions to the transferor courts. Defendant has repeatedly declared that this Panel would have transferor courts refrain from ruling on motions for remand once a conditional transfer order has been issued. As a result,

improvident stays are frequently granted once a conditional transfer order has been entered, resulting in injustice and inefficiencies in litigation. As the entry of CTO-34 will not promote the just and efficient conduct of litigation and conservation of resources, Plaintiffs move to vacate CTO-34 and respectfully request that this Panel permit this action to remain in the Northern District of Texas.

Dated: May 2, 2011

Respectfully submitted,

[/s/ Jennifer Anne Gore Maglio](#)

Jennifer Anne Gore Maglio, Esquire

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CERTIFICATE OF SERVICE

I hereby certify that on May 2, 2011, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send notice of electronic filing to all counsel of record and served the unrepresented defendants by facsimile, email, hand-delivery and/or U.S. Mail, postage prepaid and properly addressed.

[/s/ Jennifer Anne Gore Maglio](#)

Jennifer Anne Gore Maglio, Esquire