

BEFORE THE UNITED STATES JUDICIAL PANEL  
ON  
MULTIDISTRICT LITIGATION

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

**MDL NO. 2197**

LETITIA MALKMUS and GLEN MALKMUS,

Plaintiffs

v.

E.D. Wisconsin C.A. No. 2:11-cv-00365-AEG

DEPUY ORTHOPAEDICS, INC. et al,

Defendants.

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**MOTION TO VACATE CONDITIONAL TRANSFER ORDER 39**

Plaintiffs, LETITIA MALKMUS and GLEN MALKMUS, move to vacate Conditional Transfer Order No. 39 (“CTO-39”), issued in *LETITIA MALKMUS and GLEN MALKMUS v. DEPUY ORTHOPAEDICS, INC and TRP & ASSOCIATES, LLC*, 2:11-cv-00365-AEG pending in the Eastern District of Wisconsin, 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-39 will not promote the just and efficient conduct of litigation and conservation of resources, Plaintiffs move to vacate CTO-39 and respectfully request that this Panel permit this action to remain in the Eastern District of Wisconsin.

Dated: May 13, 2011

Respectfully submitted,

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

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and GLEN MALKMUS

#### **CERTIFICATE OF SERVICE**

I hereby certify that on May 13, 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