

**STATE OF NEW YORK
LITIGATION COORDINATING PANEL**

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<p>CASSIE DEVIEUX and MARCEL DEVIEUX Plaintiffs, - against - TOYOTA MOTOR CORPORATION, TOYOTA MOTOR SALES, U.S.A., INC., TOYOTA MOTOR CORPORATE SERVICES OF NORTH AMERICA AMERICA INC., TOYOTA MOTOR NORTH AMERICA, INC. AND MASSAPEQUA IMPORTS LTD. D/B/A/LEXUS OF ROCKVILLE CENTRE, Defendants</p>	:	<p>Panel Case No. 0002/2010 Index No. 16426/09 Pending in the: <u>Eleventh Judicial District</u> Assigned Justice: Hon. Duane A. Hart Filed in the Queens County Clerk's Office on</p>
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AND OTHER MATTERS LISTED ON THE ATTACHED APPENDIX

DECISION AND ORDER

Toyota Motor Corporation, Toyota Motor Sales, U.S.A., Inc., Toyota Motor North America, Inc., Toyota Motor Engineering & Manufacturing, North America, Inc. and Toyota Motor Credit Corp. (collectively, *Toyota*) defendants in the above-captioned action and in various of the actions on the attached appendix, move, by counsel, Eckert, Seamons, Cherin & Mellott, LLC, pursuant to section 202.69 of the Uniform Rules for the Trial Courts of the State of New York (22 NYCRR 202.69), by Notice of Motion dated May 19, 2010, for an order of coordination with regard to all the cases listed above and on the attached appendix.

Specifically, *Toyota* seeks to coordinate this Queens County action with the 15 pending actions listed in the Appendix and any other subsequently filed actions, and any actions that were pending at the time of this application but not included in this application that allege injuries arising out of the unintended acceleration of vehicles manufactured and sold under the Toyota or Lexus brands.

There has been only limited opposition from plaintiffs. Counsel for plaintiffs *Doukas, Rimoli, Champagne/Ota* and *Devieux* voiced their concerns that coordination may result in the delay of the adjudication of their respective cases, and therefore, may prejudice the respective

plaintiffs. Counsel for some of the plaintiffs also mentioned that, should the cases be coordinated, the Justice to whom it is assigned should have experience with respect to product liability law, along with the issues specific to this litigation. The City of New York, a defendant in the *Doukas* case, suggested that the matters should be coordinated in a City Part; this was opposed by the plaintiff in the *Leong* case (which is pending in Queens County). Counsel for *Champagne/Ota* stated that Kings or Queens County was preferable, averring that none of the plaintiffs reside in New York County nor is it more convenient. Counsel for defendant *Toyota* argued that New York County is the most appropriate venue, because the majority of pending cases have been filed in that county. Defendants' counsel in five of the actions, *Fro*, *Azizi*, *Champagne/Ota*, *Doukas*, and *Encompas*, all concurred in their opinion that New York is the proper county. Other than the foregoing, the defendants, as well as counsel for plaintiffs in several of the related actions, all support and consent to the application for coordination.

The Panel, having now considered all of the issues with respect to this motion, including that of judicial economy, finds that the purposes of Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York, are best served by granting *Toyota's* motion for Coordination. In this regard, the Panel unanimously agrees that Coordination will be advantageous and efficient for all parties, and will not prejudice any party.

The Panel agrees that Queens County is the best choice for venue. Among other things, the lead case and several of the related cases are pending in Queens County, and it is readily accessible by transportation from all of the counties involved. The Panel thus rejects the request to venue the Coordination in New York County. Moreover, although one case involves New York City as a defendant, the Panel rejects the suggestion that the Coordinated cases should be assigned to a City Part.

The Panel thereby directs that Coordination of these related matters be before a Coordinating Justice in the Eleventh Judicial District, Supreme Court, County Of Queens- Civil Branch.

The Panel agrees that the litigation should be assigned to a Justice familiar with product liability issues. Any objections or issues regarding discovery, delay and/or prejudice can be adequately addressed by the assigned Coordinating Justice. In furtherance of this Decision and Order and pursuant to 202.69(b)(3), the Panel urges the Justice to whom this coordinated litigation is assigned to consult with the federal Multi-District Litigation Judge, Hon. James Selna of the United States District Court, Central District of California, *in re: Toyota Motor Corp.*, www.CACD.uscourts.gov (Telephone [714]338-2841), in order to coordinate disclosure.

According, upon due deliberation, and for the reasons state, it is hereby:

Ordered, that the actions set forth above and in the appendix shall be Coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York, in the Supreme Court, Queens County, before a Coordinating Justice of that county; and it is further

Ordered, that any actions that allege injuries resulting from the unintended acceleration of vehicles manufactured and sold under the Toyota or Lexus brands that were filed in the Supreme Court of the State of New York heretofore and which remain active, but are not listed in the caption above or on the Appendix and any such actions that are filed hereafter shall, in accordance with Subdivision F of the Procedures of the Panel, likewise be Coordinated pursuant to Section 202.69 of the Uniform Rules for the Trial Courts of the State of New York, before the Coordinating Justice, unless the Panel rules otherwise pursuant to Subdivision F of the Procedures of the Panel; and it is further

Ordered, that pursuant to section 202.69(c)(1) of the Uniform Rules for the Trial Courts of the State of New York, the Honorable Jeremy Weinstein, the Administrative Judge of the Eleventh Judicial District (Civil Branch) shall assign the Coordinating Justice; and it is further

Ordered, that the Clerk of the Panel shall forthwith transmit a copy of this Decision and Order to counsel for all parties herein, the Justices to whom each of the above actions is currently assigned and the Honorable Weinstein, Administrative Judge for the Eleventh Judicial District; and it is further

Ordered that, within 15 days from receipt of a copy of this Order, counsel for the applicants shall serve a copy of the Panel's Decision and Order with notice of entry upon the Clerks of the Supreme Court for New York, Kings, Bronx, and Nassau Counties, who are directed, upon payment of appropriate fees, if any, to transmit the files in the eleven listed actions that are pending in said Counties to the Clerk of the Supreme Court, Queens County; and it is further

Ordered, that with respect to any additional action that is to be Coordinated as provided in the second order provision hereof, upon service of a copy of the Decision and Order of the Panel with notice of entry, together with the affidavit of compliance or the decision of the Panel set forth in Subdivision F of the Procedures of the Panel, upon the Clerk of the Court in which any such additional action is or hereafter shall be pending (other than the Supreme Court, Queens County) as provided in Subdivision F, the said Clerk shall forthwith transfer to the Supreme Court, Queens County, after the payment of the appropriate fees, if any, the file in any such additional action that is to be Coordinated as provided in this Decision and Order and Subdivision F; and it is further

Ordered, that the Clerk of the Supreme Court, Queens County, shall assign a Queens County index number, without fee, to any such additional action transferred to that county from another as provided above and such number shall serve as a means of identification and orderly processing of any such case while it remains in Queens County for the purpose of Coordination.

This constitutes the Decision and Order of the Panel. The Panel, by its Presiding Justice and with their consent, signs this Decision and Order.

Dated: February 23, 2011

Justices of the Panel:

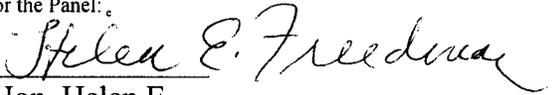
Hon. Helen E. Freedman
Presiding Justice, First Department

Hon. Joseph J. Maltese
Associate Justice, Second Department

Hon. E. Michael Kavanagh
Associate Justice, Third Department

Hon. Matthew Rosenbaum
Associate Justice, Fourth Department

For the Panel:



Hon. Helen E.
Freedman Presiding
Justice

APPENDIX – ADDITIONAL UNINTENDED ACCELERATION CASES

<u>CASE</u>	<u>INDEX NO.</u>	<u>COUNTY</u>	<u>JUSTICE ASSIGNED</u>
Rimoli v. Ray Catena Corp..	310456/08	Bronx	Hon. Maryann Briganti- Hughes
Garcia v Chen v Toyota	021557/06	Kings	Hon. Herbert Kramer
Fro Serv. Corp., v Brown	013778/08	Kings	None
Azizi v Brown	017175/08	Kings	Hon. Debra Silber
Champagne v Brown	025273/08	Kings	Hon. Debra Silber
Kerins v Toyota Motor Corporation	003851/10	Nassau	None
Leviten v Lexus	107681/07	New York	Hon. Geoffrey D. Wright
Doukas v Leviten	117118/07	New York	Hon. Geoffrey D. Wright
Encompass Insurance v Brown v Lexus	112865/09	New York	Hon. George J. Silver

Adirondack Insurance v Toyota	102490/10	New York	None
Klarreich v NR Automotive.	105021/10	New York	Hon. Anil Singh
Leong v Toyota.	027718/09	Queens	Compliance Conference Judge
Doukas v Toyota	034148/09	Queens	Compliance Conference Judge
Leviten v Toyota	034137/09	Queens	Compliance Conference Judge
Leong v Toyota	000550/10	Queens	Hon. Allan B. Weiss