

Midler v Crane
2010 NY Slip Op 04027
Decided on May 11, 2010
Court of Appeals
Published by <u>New York State Law Reporting Bureau</u> pursuant to Judiciary Law § 431.
This opinion is uncorrected and subject to revision before publication in the Official Reports.

Decided on May 11, 2010

No. 146 SSM 18

[*1]Susan Midler, Respondent,

v

Richard Crane, M.D., Appellant.

Submitted Steven J. Ahmuty, Jr., for appellant.
Submitted by Douglas A. Cooper, for respondent.

MEMORANDUM:

The order of the Appellate Division should be reversed with costs, and a new trial ordered.

We agree with the Appellate Division majority that, on the facts of this case, there was no inconsistency between the findings that defendant was not negligent in failing to diagnose [*2]the plaintiff's condition and that he was negligent in failing to monitor her. However, the jury's verdict was inconsistent in finding that defendant's failure to monitor the patient was a substantial factor in causing her injury, while the negligence of a non-party,

Dr. Curtis, in failing to transmit his urinalysis results to defendant was not.

On review of submissions pursuant to section 500.11 of the Rules, order reversed, with costs, and a new trial ordered, in a memorandum. Chief Judge Lippman and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided May 11, 2010

[Return to Decision List](#)