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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 146 SSM 18
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
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.

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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