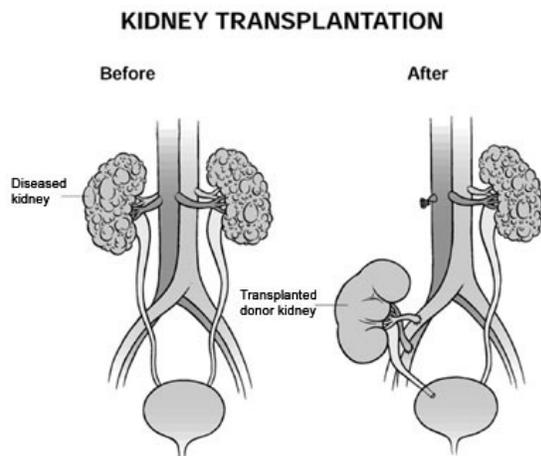


## Doctor's Failure to Monitor for Lupus Leads to Kidney Failure and \$2,500,000 Pain and Suffering Verdict Upheld on Appeal

Posted on November 24, 2009 by [John Hochfelder](#)

In October, 2000, Susan Midler was referred by her gynecologist to Richard Crane, M.D., a rheumatologist. She had complaints of joint pain and he diagnosed her with arthritis after administering several diagnostic tests (including a urinalysis), two of which were positive for [lupus erythematosus](#) (an autoimmune disease that can affect vital organs).

Dr. Crane's letter to the referring physician stated that **continued monitoring was required to make a more definitive diagnosis as to lupus**. He treated Ms. Midler for arthritis over the next two years but never again followed up with another urinalysis until January 2003 when he definitively diagnosed **lupus nephritis (lupus affecting the kidneys)**. Ms. Midler's kidneys rapidly failed, she underwent five months of three times a week [dialysis](#) (the process of cleansing the blood by passing it through a special machine) and then in December 2003 she underwent a kidney transplant.



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A medical malpractice case followed and after a seven day trial in November 2006, a Manhattan jury concluded that the doctor had departed from good and accepted medical practice in the manner in which he monitored the plaintiff, including not performing urinalysis tests between October 2000 and January 2003. The jury then proceeded to evaluate pain and suffering and determined that this woman in her 60's sustained damages in the sum of **\$2,500,000** (\$500,000 past, \$2,000,000 future – 21 years). Both the liability and damages verdicts were upheld on appeal this week in [Midler v. Crane](#).

As often occurs, the jury's pain and suffering verdict was ruled upon by the appellate court without any significant reference to the facts supporting the pain and suffering figures. After extensive discussion of the treatment constituting the malpractice and the legal standards applicable thereto and after analyzing the testimony of the competing medical experts, the appellate judges addressed the

substantial \$2,500,000 damages award merely by stating: “ ... the awards for pain and suffering do not deviate materially from what would be reasonable compensation ....”

Once again, we get from the appellate court canned language drawn directly from the controlling statute, CPLR 5501, without any guidance as to why the award was upheld.

What follows then are the **missing details as to Ms. Midler’s pain and suffering:**

- terrifying fear and pain during the eight months leading up to the definitive diagnosis of lupus nephritis in January 2003
- emergency hospitalization in May 2003 with life-threateningly low blood count
- dialysis three times a week for five months with pain, nausea, sickness and suicidal psychological effects
- kidney transplant surgery in December 2003
- constant fear of transplant rejection
- likelihood of additional dialysis (transplanted kidneys likely have a life span of 5-10 years)
- need to take immunosuppressant drugs to avoid transplant rejection

**Inside Information:**

- The jury found the doctor only 60% at fault and assigned 40% of the fault to Ms. Midler because she hadn’t returned to Dr. Crane before January 2003 after being directed to do so by another physician and also because she didn’t treat with a kidney specialist for a month after Dr. Crane told her she had lupus nephritis. So: the \$2,500,000 verdict gets reduced by 40% and Ms. Midler’s take is not \$2,500,000 but is \$1,500,000 (before attorney’s fees and disbursements)
- Two of the five appellate court judges dissented from the liability finding of the majority and would have ordered a new trial because, they said, the liability verdict was inconsistent in finding that the doctor committed malpractice in failing to monitor his patient for the development of lupus while also finding that he was not negligent in failing to diagnose and treat her for lupus