

operation of the crane with an excess load, in violation of Industrial Code (12 NYCRR) § 23-8.2(g)(2)(iii), amounted to negligence but that this was not a proximate cause of the injury suffered by plaintiff. Experts testified at trial that the crane had a pre-existing crack that made it unsafe to operate with any load. The jury's finding that the collapse was caused by the defect in the crane, and not the size of the load, was therefore supported by record evidence. Based on the proof, issues of negligence and causation were not inextricably interwoven in this case and the jury verdict, which did not apportion any liability to the City of New York, was not inconsistent (cf. Marine Midland Bank v Russo Produce Co., 50 NY2d 31, 41 [1980]). Because the Appellate Division did not abuse its discretion when it reversed Supreme Court's order granting a new trial, further consideration of plaintiffs' arguments is beyond our review power (see Levo v Greenwald, 66 NY2d 962, 963 [1985]). Finally, in this procedural context, this Court may not review the December 2002 nonfinal Appellate Division order on this appeal from the June 2005 order (see Weinberg v Hertz Corp., 69 NY2d 979, 981 [1987]; CPLR 5713, 5501[a][1]).

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, with costs, and certified question answered in the affirmative, in a memorandum. Chief Judge Kaye and Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided May 3, 2007