

indemnification of its \$550,000 settlement contribution based upon the motor vehicle lease agreement for the subject vehicle.

Paragraph 35 of the lease agreement obligates defendant Gross to

"reimburse [BMW] for any amount of loss, liability or other expense including attorneys' fees arising from the operation, condition, use or ownership of the vehicle, including claims made under the strict liability doctrine."

Gross does not dispute the validity of the indemnification clause. However, Gross contends that the request for indemnification in the amount of \$550,000 should be denied on the ground that the settlement amount was unreasonable and that, in any event, a hearing is required to determine the issue of the reasonableness of the amount BMW paid in.....¹

"When an indemnitor has notice of the claim against it, the general rule is that the indemnitor will be bound by any reasonable good faith settlement the indemnitee might thereafter make." (Coleman v J.R.'s Tavern, 212 AD2d 568, 569 [1995].) At the trial, this court heard testimony establishing that the plaintiff sustained severe serious injuries as a result of the accident, and that the settlement amount was reasonable under the circumstances and made in good faith since BMW was properly found liable to the plaintiff on vicarious liability grounds as the owner of the vehicle pursuant to VTL § 388. "Here, [BMW] presented a clear factual showing justifying a matter of law determination of its good faith in making the particular settlement payments and of the reasonableness [thereof]. Under the circumstances, [Gross is] bound to come forward with proof of evidentiary facts showing the existence of a genuine and substantial issue as to good faith or reasonableness. Lacking the appearance of such an issue this court is entitled to and should dispose of the matter on the law, and direct judgment...in the amount established..." (Gray Manufacturing Company v Patte Industries, Inc., 33 AD2d 739 [1969].) Accordingly, BMW's request for indemnification in the amount of \$550,000 is granted.

The motion is in all other respects denied for failure of proof.

Dated: February 7, 2005

J.S.C.

..... *ty of a hearing has been obviated by the court's*

prior hearing of the relevant facts.