



## HIGH COURT OF AUSTRALIA

Public Information Officer

9 October, 2003

### HOYTS PTY LIMITED v DIANE BURNS

The High Court of Australia today unanimously allowed an appeal by Hoyts from a New South Wales Court of Appeal decision that the cinema operator was liable for injuries incurred by a patron who injured her back when she did not notice her seat was in the upright position.

Ms Burns, a teacher's aide, helped supervise a group of disabled children on an outing to the Hoyts cinema complex at Bankstown in Sydney in March 1997. The cinema had automatically retracting seats. During the movie, the four-year-old boy Ms Burns was looking after became very agitated and crawled rapidly away. She left her seat to retrieve the boy who was screaming and kicking as she sat down without noticing the seat had become upright again. Ms Burns injured her spine when it struck a metal bar under the seat as she fell.

No other such incident had been recorded by the Bankstown complex, which was then 10 years old and could seat more than 2,400 people.

Ms Burns sued Hoyts for negligence, claiming that if signs had been placed inside or outside the cinema she would have read them and known to check whether the seat was up. In the NSW District Court, Judge Susan Gibb held Hoyts was not negligent.

The NSW Court of Appeal unanimously allowed Ms Burns's appeal and held that signs warning that the seats retracted automatically should have been displayed in the foyer. Hoyts appealed to the High Court.

The Court held that the Court of Appeal had not given sufficient regard to the manner in which Ms Burns came to give evidence about warning signs, in effect as an afterthought. It was far from clear that such warnings would have been heeded and the Court of Appeal had not considered what Ms Burns herself would have done while her attention was distracted by a distressed child.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*