Does Santa Claus exist? Litigation funding revisited

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PRACTICES International, Litigation, Europe, Middle East and Africa

Introduction

In the recent case of R (on the application of PACCAR Inc & Ors) v Competition Appeal Tribunal & Ors [2023] UKSC 28, the Supreme Court ruled that a litigation funding agreement ("**LFA**") under which the funder is to receive a percentage of any damages recovered by the funded party is a damages-based agreement ("**DBA**") within the meaning of s58AA Courts and Legal Services Act 1990 ("**CLSA**"). As a result, the majority of existing LFAs governed by English law became instantly unenforceable, prompting a likely reshaping of the litigation funding sector in this country.

Background

The origin of these proceedings follows from a finding by the European Commission in 2016 that five European truck manufacturers infringed competition law. Following on from the European Commission's finding, the Road Haulage Association Ltd ("**RHA**") and UK Trucks Claim Ltd ("**UKTC**") sought an order from the Competition Appeal Tribunal that would authorise them to bring collective claims for damages on behalf of purchasers of trucks from these manufacturers. RHA and UKTC obtained litigation funding, in which the funders' compensation was calculated by reference to a share of the damages recovered in the litigation.

Read the full article here.