

## COMMERCIAL DISPUTES WEEKLY – ISSUE 67

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### BITE SIZE KNOW HOW FROM THE ENGLISH COURTS

*The Commercial Disputes Weekly will be taking a short break, returning on 6 April.*

We appreciate that our clients, partners and friends are currently facing unprecedented challenges as a result of the spread of the COVID-19 virus. Click [here](#) for a message from our Managing Partners, and [here](#) for all of our latest updates and articles on the subject. If you have any questions or require support, please do not hesitate to speak to your usual contact at WFW.

**"Cases of evidence procured by torture aside, the general rule of English law is that evidence is admissible if it is relevant to the matters in issue. If it is, it is admissible and the court is not concerned with how the evidence was obtained."**

**Ras Al Khaimah  
Investment Authority v  
Azima**

#### Arbitration

In apparently the first case of its kind, the High Court has confirmed that equitable compensation or damages may be payable for breach of an equitable obligation to arbitrate, arising where a party who has derived rights under a contract brings proceedings in a jurisdiction contrary to an arbitration clause in that contract.

*Argos Pereira España SL & Anr v Athenian Marine Ltd*

#### Economic duress

The Court of Appeal has rejected arguments that a debt restructuring resulted from intimidation and was voidable for economic duress, noting that coercion is an essential element of either tort, but in this case there was no finding that the claimant had been coerced into concluding the agreement, which was instead the result of robust negotiation between commercial parties, each of which had the benefit of legal advice.

*Morley (t/a Morley Estates) v Royal Bank of Scotland Plc*

#### Evidence

Upholding a decision to admit evidence obtained through illegal hacking, the Court of Appeal has observed that the relevant documents would have been disclosable in any event and revealed serious fraud on the part of the appellant. However, where such evidence is found to be admissible, the court may nevertheless express its disapproval, such as by means of adverse costs orders.

*Ras Al Khaimah Investment Authority v Azima*

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## Guarantees

Rejecting arguments that guarantees of obligations under bareboat charterparties which were largely comprised of “boilerplate” text contained an implied term that ship owners would not seek additional security, the Commercial Court has noted the high legal hurdle for implication of a term, particularly where it purports to take away the common law rights or remedies of a party. *CVLC Three Carrier Corp & Anr v Arab Maritime Petroleum Transport Company*

## Maritime

In an interesting decision concerning the proviso to an off hire clause, the Commercial Court has confirmed that an “act or omission or default of charterers” was not confined to conduct in breach of an obligation under the charter, and instead included inaction in circumstances where the charterer should reasonably appreciate it would be expected to act.

*Navision Shipping A/S v Precious Pearls Ltd & Ors*

## Maritime

Accepting owners’ construction that a hire clause in a time charter which referred to the Baltic Exchange Capesize Index encompassed any change to the relevant benchmark ship, the Commercial Court has commented that where the benchmark changed, a term could properly be implied to the effect that a reasonable size adjustment should be made.

*Regal Seas Maritime SA v Oldendorff Carriers GmbH & Co KG*

## Recovery of goods

The Circuit Commercial Court in Manchester has confirmed that actions for the recovery of goods, whether or not brought under the Consumer Credit Act, are suited to a fixed date hearing procedure, and while the court must be cautious about proceeding on a summary basis at such a hearing, where the evidence failed to disclose any defence to the claim, then there was no reason why an order for delivery up should not be made.

*Haydock Finance Limited v Starcruiser Bussing Limited & Anr*

Should you wish to discuss any of these cases in further detail, please speak with a member of our London dispute resolution team below, or your regular contact at Watson Farley & Williams:

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