



# SEMAPHORE

Newsletter of the Maritime Law

Association of Australia and New Zealand



## Blocked E-mail Costs Broker US\$380k

International Transport Intermediaries Club (ITIC) has described how a spam filter combined with failure to specifically pass on a few words about a vessel's navigational restrictions to a charterer led to a shipbroker having to settle a claim for about US\$380,000.

In its October 2024 *Claims Review*, the specialist professional indemnity insurance provider described how the broker had agreed terms in a "fixture" (contract between shipowner and charterer) and was expecting to receive the intended ship's official certificate from the owner.

The owner advised that ahead of receiving that certificate, the charterer could for reference check the certificate of a similar sistership where "the navigation area is R1 as well".

However, events then played out as follows:

- the brokers' spam filter blocked the original certificate E-mail
- the broker ultimately received the certificate via WhatsApp but still had issues transferring it via their E-mail system
- the broker failed to pass on the certificate to the charterer
- similarly, the brokers did not pass on the owner's comment about the R1 navigation restriction

ITIC's reportage advised that the charterer subsequently lifted "subjects" (preconditions to be met before a charter party contract becomes binding).

"The issue arose when voyage instructions were passed on to the master, who advised that the R1 notation meant that the ship could not sail beyond a certain distance from shore," stated ITIC.

"This meant that the ship could not perform the intended voyage.

"A without-prejudice negotiation ensued, resulting in the charterparty being cancelled and a separate agreement being reached for the charter of the ship for a shorter period but at a higher rate.

"During these negotiations, charterers became aware that owners had advised the shipbrokers of the R1 notation before charterers lifted subjects."



Consequently, the charterer alleged a claim against the shipbrokers for breach of contract/negligence and claimed:

- their losses for the cost of additional time and bunkers during the replacement one-round-trip charter
- the costs of hiring a replacement ship for the balance of the charter period
- additional insurance costs and legal costs

“There were issues as to who the broker owed a duty to, as charterers had their own broker, and the applicability of the commission agreement was in question. Further, the losses claimed were unclear and not evidenced.

“However, the charterers commenced arbitration against the shipbrokers. Legal advice was obtained by ITIC, on behalf of the shipbroker, which said it was likely the shipbroker would have a liability (either directly to the charterer or the charterer would have a claim against the owner, who in turn would have a claim against the shipbroker for failing to pass on the message, which would be a more expensive option than the first).

“Following receipt of further information, clarification of the claim and arguments made regarding the charterers’ actual losses, the claim was settled for about US\$380,000 which was around 70% of the initial full claim.”

The nine-page October 2024 ITIC *Claims Review* can be read [here](#).

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