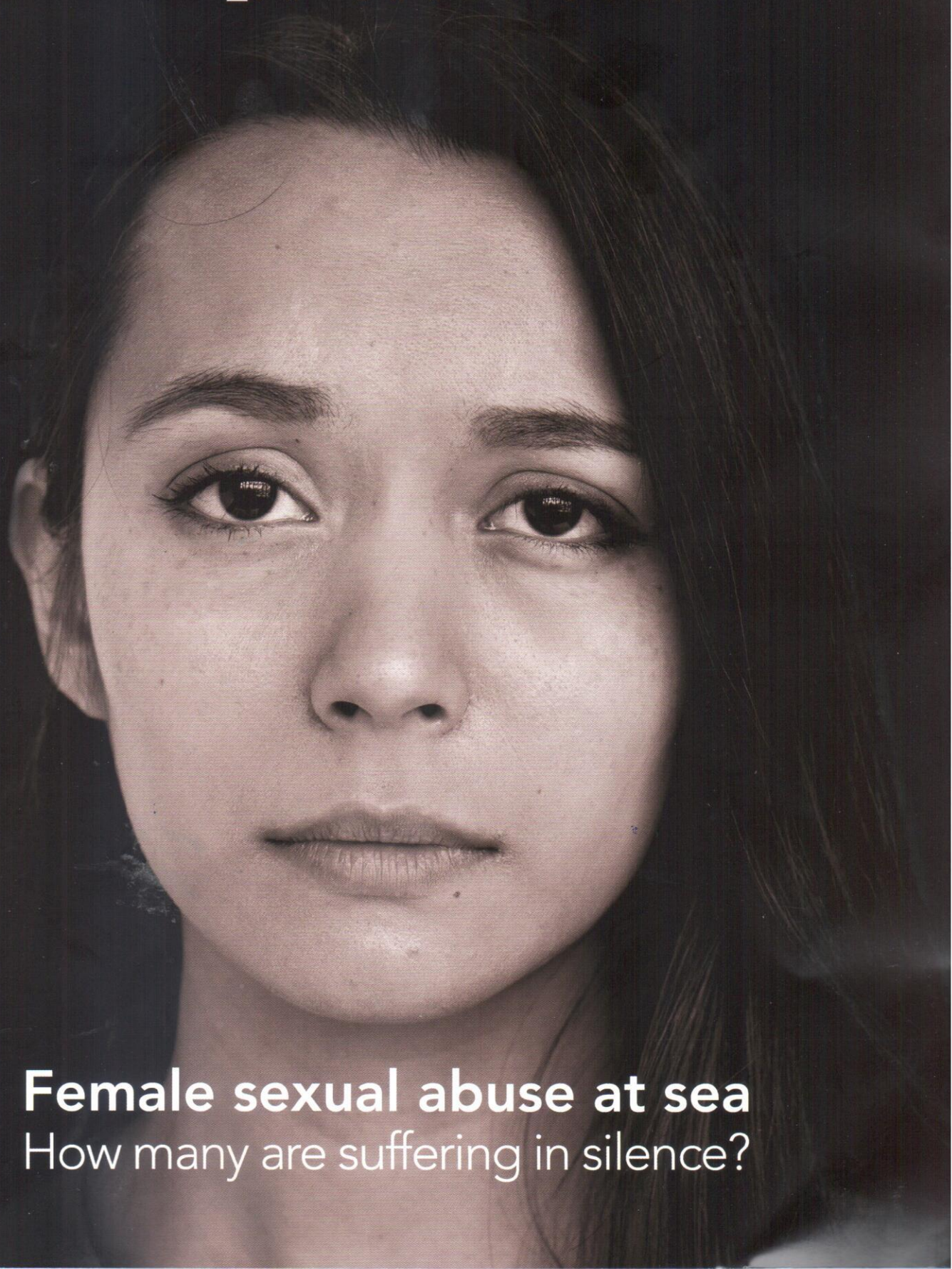


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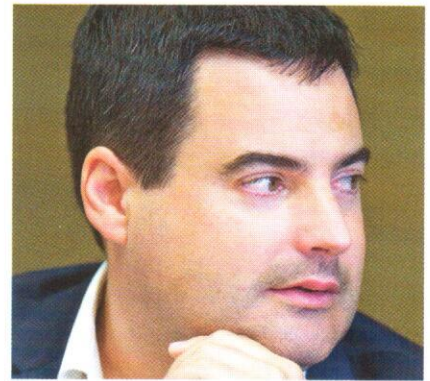
I N T E R N A T I O N A L



Female sexual abuse at sea
How many are suffering in silence?

Beware changes to contracts in German jurisdiction

By Matthew Offers, Senior Account Executive with International Transport Intermediaries Club (ITIC)



The global economic downturn which began in 2008 and which continues to have a significant effect on the market to varying degrees today has led to an increase in the number of banks now involved in ship ownership. This in turn has spawned a move towards wider use of the BIMCO Shipman 2009 contract between owners in Germany

clause stipulating that the ship manager's liability is limited to 10 times the annual shipmanagement fee is now established as an industry standard.

Most parties accept this limitation of liability as a fair and reasonable basis upon which managers can limit their liability.

change to German law can lead to significant issues.

If a BIMCO shipmanagement contract has been altered to reflect German law, there is the possibility that any limitation of liability in the contract may be set aside. This could then leave the ship manager without the protection of the contractual limitation of liability. The reason for this

and their third-party ship managers. But certain elements of the old-style German shipmanagement contract wording are still in use, with potentially conflicting results.

ITIC has seen a move away from the more traditional German shipmanagement contract, which included the basic provisions of German law, very often with Hamburg arbitration and the inclusion of gross negligence and negligence as part of the liability regime. This differs from English law, which does not make such a distinction where the interpretation of negligence is concerned.

ITIC welcomes such a change. The Shipman contract is well-known within the industry, and is based on a wide understanding of the relationship that exists between owners and ship managers. For example, the Shipman

Following adoption of the Shipman contract by the German shipping community, however, ITIC has seen attempts to maintain certain elements of the old-style German shipmanagement contract wording, often involving a willingness to change certain Shipman clauses.

The clause that seems to be amended most often is that of jurisdiction, whereby a red line is passed through English law, and German law added in its place. This simple change is often made because both parties are based in Germany and feel more comfortable with German law and their understanding of that jurisdiction. However, the Shipman contract is based on common law principles identifying English or US law as choices, and the

is that the German civil code considers contractual terms invalid if they are deemed unreasonable, and disadvantage the other parties.

As a result, the entire limitation of liability clause could become invalid.

One way of ensuring that specific elements of the contract do not suffer this fate is to negotiate individual side-agreements to the main contract. This requires that the party receiving the proposal has a genuine possibility to negotiate the terms, and can redraft the clause and make an independent decision about whether or not to accept the terms. All these considerations must be well-documented, and it must be clear that both parties are willing to negotiate.

Before agreeing to jurisdiction clause changes, it is therefore always worth considering if such changes would in fact be as desirable as originally anticipated. ●

