

## AN ADJUSTER'S NOTE ON BALLAST GENERAL AVERAGE

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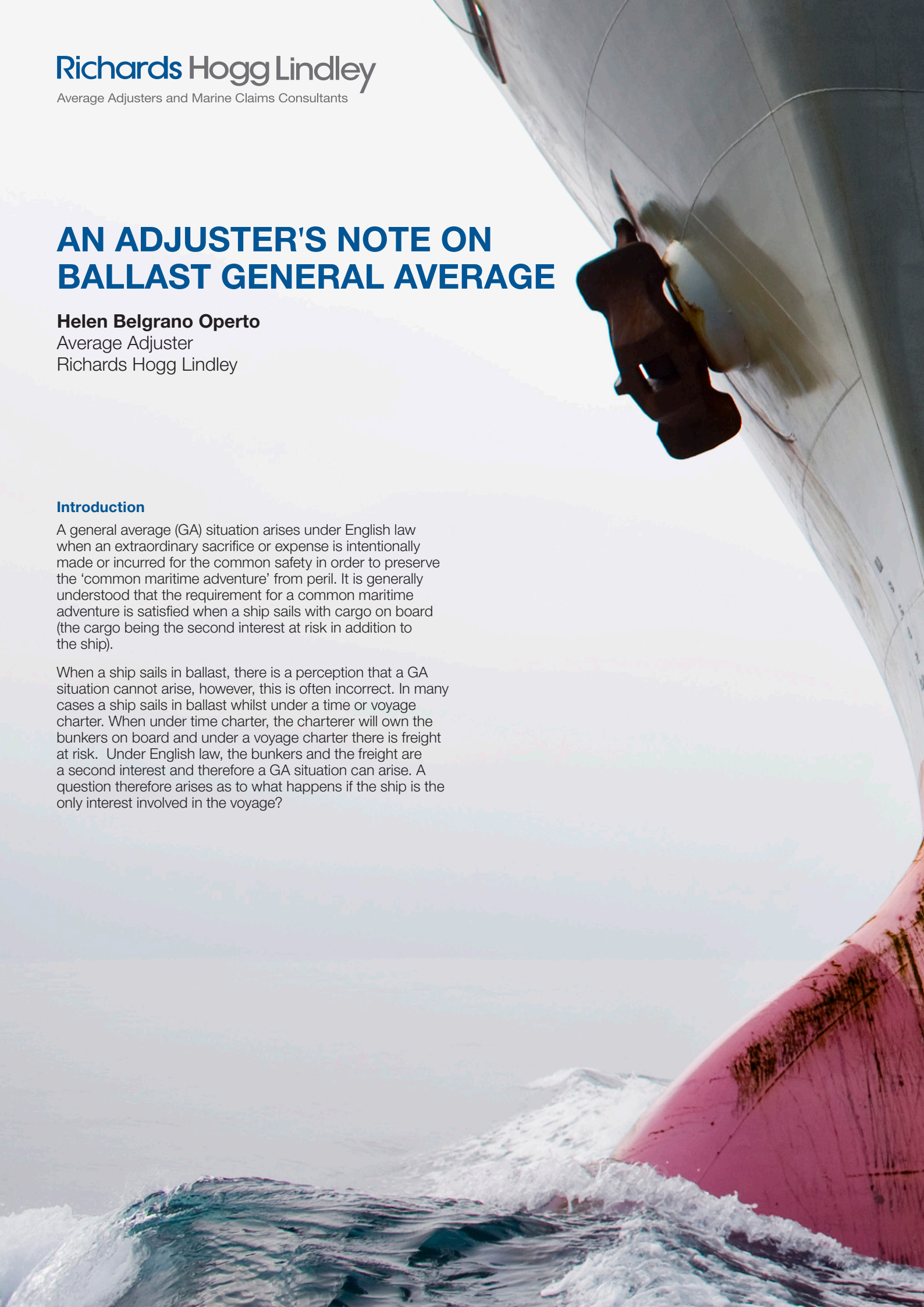
Average Adjuster

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### Introduction

A general average (GA) situation arises under English law when an extraordinary sacrifice or expense is intentionally made or incurred for the common safety in order to preserve the 'common maritime adventure' from peril. It is generally understood that the requirement for a common maritime adventure is satisfied when a ship sails with cargo on board (the cargo being the second interest at risk in addition to the ship).

When a ship sails in ballast, there is a perception that a GA situation cannot arise, however, this is often incorrect. In many cases a ship sails in ballast whilst under a time or voyage charter. When under time charter, the charterer will own the bunkers on board and under a voyage charter there is freight at risk. Under English law, the bunkers and the freight are a second interest and therefore a GA situation can arise. A question therefore arises as to what happens if the ship is the only interest involved in the voyage?



## Ballast voyage

Here is an example. A ship, which is not under charter, sails in ballast and is involved in a serious casualty requiring immediate repairs. The ship is unable to sail for three months whilst at the repair yard and incurs port charges, crew wages & maintenance, fuel and stores during the three months.

As there is no other interest at risk on board at the time of the casualty, a GA situation does not arise under English law because of the absence of a common maritime adventure. Therefore, the shipowner could not recover any GA expenses at the repair yard or other costs.

If exactly the same casualty were to arise but in this instance the vessel was under a time, voyage charter or carrying cargo, GA would arise under English law, as a common maritime adventure would exist. The shipowner would be entitled to recover GA expenses incurred whilst at the repair yard which would be apportioned amongst ship, cargo, time charterers' bunkers or future voyage freight as applicable.

As demonstrated above, under English law, the shipowner is unable to recover any GA costs in a situation where a common maritime adventure does not exist but an owner may still be able to recover certain GA costs under their hull and machinery insurance policy.

## Ballast GA clause

The solution provided by most hull and machinery insurance policies is a ballast GA clause which presumes that there is a GA situation where only the ship is at risk and there is no common maritime adventure.

Such clauses provide that the vessel should be considered in the same position for the purposes of GA as if interests other than just the ship are at risk which would allow for certain GA expenses to be recovered from hull and machinery underwriters. The inclusion of a ballast GA clause in the policy addresses the situation seen above, where a shipowner would not be able to recover expenses in GA solely because of the ship's charter arrangements at the time of the casualty.

As ballast GA clauses extend the benefits available to a shipowner that are available under the law, it is usual for the clauses to exclude some GA expenses. Two examples of this are found in the Institute Time Clauses – Hulls 1/10/83 which exclude commission and interest and in the Nordic Plan which excludes wages and maintenance during the actual time spent effecting permanent repairs.

Examples of ballast GA clauses can be found in the Institute Time Clauses – Hulls (1/10/83), the Nordic Plan, the French Hull Clauses and the DTV clauses. There are other clauses which do not include a ballast GA provision. An example of this is the American Institute Hull Clauses which, under American law, recognise the liability of the ship's underwriters in any event as a separate interest at risk. Therefore, a GA situation arises at law when an insured vessel is at risk.

## Conclusion

Where a ship sails in ballast under time or voyage charter, the time charterer's bunkers or freight at risk form a separate interest to the ship and a GA situation can arise under English law.

However, where the ship sails in a ballast condition and not under charter, a GA situation cannot arise as a matter of English law which can result in the shipowner unable to recover costs in GA.

To remedy the above, ballast GA clauses were introduced into major hull insurance policies as a concession to shipowners. These clauses can cover certain GA expenses despite the lack of a common maritime adventure.