

No. 23-1246

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IN THE  
**Supreme Court of the United States**

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SHELL OFFSHORE INC.,  
*Petitioner,*  
v.

PALFINGER MARINE USA, INC.,  
*Respondent.*

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**On Petition for Writ of a Certiorari to the  
United States Court of Appeals  
for the Fifth Circuit**

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**REPLY BRIEF FOR PETITIONER**

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September 26, 2024

## REPLY BRIEF FOR PETITIONER

Respondent's Opposition concedes that, had the Fifth Circuit equated oil and gas production from a fixed platform with maritime commerce, such a conclusion would be "in conflict with *Rodrigue v. Aetna Casualty and Surety Co.*, 395 U.S. 352, 360 (1969) and *Herb's Welding, Inc. v. Gray*, 470 U.S. 414, 422 (1985)." [Opp., p. 1]. That is precisely the point of the Petition. Respondent, however, attempts to diffuse that conflict by noting that *Rodrigue* and *Herb's Welding* "had nothing whatsoever to do with maritime contracts." [Opp., p. 16.] Respectfully, this distinction misses the larger point worthy of this Court's review. By concluding that offshore oil and gas activities from a fixed platform is "maritime commerce," as the plain language of its ruling repeatedly declares, the court of appeals created a legal distinction for maritime contracts that cannot be reconciled with this Court's maritime tort principles in *Rodrigue* and *Herb's Welding*.

The Fifth Circuit's repeated reliance on oil and gas activities on a fixed platform to support the application of maritime law, "[r]egardless of whether employing a lifeboat as a lifeboat means its passengers are engaged in maritime activity,"<sup>1</sup> undermines the remainder of Respondent's opposition focusing on lifeboats performing a "maritime service." After all, the "passengers" as discussed by the Fifth Circuit are workers on a fixed platform in the Gulf of Mexico. The only "commerce" at issue is the exploration and production of minerals from a platform on the Outer Continental Shelf.

With the potential use of lifeboats fleeing a platform appropriately excluded from its "maritime commerce" analysis, the sole commerce discussed by the Fifth

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<sup>1</sup> Pet. App. A, p. 18.

Circuit supporting the application of maritime law was “offshore drilling and production of oil and gas.”<sup>2</sup> In its concluding paragraph, the court of appeals stated in no uncertain terms that “offshore oil and gas drilling is what satisfied the first factor,”<sup>3</sup> which the court explained was “whether the contract’s purpose is to effectuate maritime commerce.”<sup>4</sup>

According to this Court, however, oil and gas drilling from a fixed platform like Auger is “not even suggestive of traditional maritime affairs.” *Herb’s Welding, Inc.*, 470 U.S. at 422. The Fifth Circuit’s ruling has created a compelling and irreconcilable conflict between maritime tort law on the Outer Continental Shelf – in which accidents on fixed platforms “had no more connection to the ordinary stuff of admiralty than do accidents on piers,” *Rodrigue*, 395 U.S. at 360 – and maritime contract law in which drilling and production from the same platform satisfies the maritime commerce requirement. Such disunity between maritime tort law and maritime contract law can only be cured through the granting of the Petition.

Respectfully submitted,

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<sup>2</sup> *Id.* at p. 16.

<sup>3</sup> *Id.* at p. 18.

<sup>4</sup> *Id.*