

A federal grand jury was investigating a corporation whose tanker ship had spilled crude oil into environmentally sensitive waters. The grand jury issued a subpoena requiring the corporation to produce all emails and internal documents regarding the corporation's knowledge of the risks of an oil spill. The corporation has objected, citing its Fifth Amendment privilege against self-incrimination.

Can the subpoena be enforced?

- A. No, because the corporation was not granted transactional immunity.
- B. No, because the corporation was not granted use-and-derivative-use immunity.
- C. Yes, because a corporation has no Fifth Amendment privilege.
- D. Yes, because the Fifth Amendment privilege does not apply to the compelled production of documents.

Explanation:

A **subpoena** is a written order that compels a witness to testify or produce documents in his/her possession. If a subpoena seeks testimonial communications that may be incriminating, the witness can avoid the subpoena by asserting the Fifth Amendment **privilege against self-incrimination**. However, this privilege can be invoked only by **natural persons** (eg, individuals, sole proprietorships)—**not artificial entities** (eg, corporations, partnerships).

Here, the corporation objected to the grand jury's subpoena requiring it to turn over all emails and documents related to its knowledge of the risks of an oil spill. However, the corporation's objection was based on the Fifth Amendment privilege against self-incrimination, which does not apply to corporations (artificial entities). Therefore, the corporation's objection will be overruled, and the subpoena will be enforced.

(Choices A & B) An individual who invokes the Fifth Amendment privilege against self-incrimination can still be required to provide testimonial communications if that individual receives:

transactional immunity – protects an individual from being prosecuted for any crimes associated with his/her testimonial communications *or*

use and derivative use immunity – prevents the government from using an individual's testimonial communications (and any evidence derived from them) against him/her in future criminal proceedings.

But since a corporation has no Fifth Amendment privilege, the subpoena can be enforced even if the corporation did not receive immunity.

(Choice D) The Fifth Amendment privilege against self-incrimination *does apply* to the compelled production of documents when their production would admit that (1) the documents exist, (2) the suspect possesses them, or (3) the documents are authentic. But since corporations cannot assert this Fifth Amendment privilege, the corporation must produce all the subpoenaed documents.

Educational objective:

The Fifth Amendment privilege against self-incrimination can be asserted only by natural persons—not artificial entities like corporations.

References

U.S. Const. amend. V (privilege against self-incrimination).

Hale v. Henkel, 201 U.S. 43, 69–70 (1906) (holding that corporations have no Fifth Amendment privilege against self-incrimination).

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5th Amendment privilege against self-incrimination

