SFBBG
Schoenberg | Finkel | Beederman | Bell | Glazer LLC

# SENSIBLE SOLUTIONS

Spring 2026

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## About Our Law Firm

We are comprised of seasoned and dedicated professionals who familiarize themselves with our clients' industries as well as their legal issues. We strive to maintain long-term client relationships by keeping our clients fully informed and respecting their time and business resources.

## Legal Practice Areas

- Banking and Creditors' Rights
- Condo-Community Association Representation
- Corporate and Other Business Transactions
- Defamation, Privacy and First Amendment
- Employee Benefits
- Employment Law
- Estate Planning, Probate and Trust Administration
- Health and Fitness Industry
- Independent Sales Representatives
- Intellectual Property Law
- Litigation and Alternative Dispute Resolution
- Matrimonial Mediation
- Mergers, Acquisitions and Business Sales
- Real Estate and Finance
- Real Estate Tax Reduction
- Securities, Futures and Derivatives

## The Cautionary Double-Meaning of "Artificial" Intelligence

Artificial intelligence, AI, is a tool. The current iterations of ChatGPT, Perplexity, etc. are resources, not substitutes for actual thought. Used correctly, they can bolster analysis, provide feedback, and help organize an argument. Used incorrectly, they can have serious consequences, including compelled production of AI chat logs in discovery and substantial adverse judgments.

Consider the actions of Krafton, Inc. Krafton is a South Korean video game publisher, known for its game PUBG: Battlegrounds. On March 16, 2026, Krafton suffered a newsworthy defeat in Delaware's Court of Chancery. The case, Fortis Advisors, LLC v. Krafton, Inc., largely resulted from the strategy that Krafton's CEO, Changhan (CH) Kim, devised with ChatGPT to avoid Krafton's contractual liability.

The Court's 91-page opinion provided an in-depth view of the background, scheme, and fallout from Krafton's ill-advised reliance on AI. In late 2021, Krafton entered into an Equity Purchase Agreement ("EPA") with Unknown Worlds Entertainment, a video game company responsible for the popular game Subnautica. The purchase price was $500 million, with up to $250 million in potential contingent earnout payments. The earnout was performance based and depended on Unknown Worlds' revenue through December 31, 2025. Unknown Worlds' revenue would largely be determined by the performance of its upcoming game Subnautica 2.

As part of the deal, Krafton contractually guaranteed that the founders of Unknown Worlds, Charlie Cleveland and Max McGuire, as well as its CEO, Ted Gill, would retain operational control of Unknown Worlds and could be fired only for cause. The definition of "cause" was negotiated between the parties and explicitly defined in the EPA.

Krafton's CEO, Kim, thought that Krafton had overpaid for Unknown Worlds, and was concerned that paying the contractual earnout payment would cause him personal reputational harm. After Krafton's finance team prepared earnout projections, it became clear that the earnout would be triggered based on a successful release of Subnautica 2 in August 2025.

Following a review meeting in May 2025, Unknown Worlds' leadership advocated for the August 14 release of Subnautica 2. Kim had other ideas. He discussed the earnout payment and the amounts that Unknown Worlds' key employees stood to make with Krafton's legal team. Kim was warned by his colleague that a "dismissal with cause" of the key employees (Cleveland, McGuire, and Gill) would not eliminate Krafton's earnout obligation and would expose Krafton to a lawsuit.

At this point, as noted by the court, "Kim turned to ChatGPT for help." Even the AI chatbot told Kim that the earnout obligation would be "difficult to cancel." Yet, Kim persisted. Again, as stated by the court, "[a]t ChatGPT's suggestion, Kim formed an internal task force, dubbed 'Project X.' The task force's mandate was to either negotiate a 'deal' on the earnout or execute a 'Take Over' of Unknown Worlds."

Kim continued to rely on ChatGPT, which prepared a strategy for Krafton if it was unable to reach a deal with Unknown Worlds. "Over the next month, Krafton followed most of ChatGPT's recommendations." Ultimately, Krafton terminated the employment of Cleveland, McGuire, and Gill on July 1, 2025, purportedly for "cause." The termination letter provided a single ground for dismissal, "the intention to proceed with a premature release of Subnautica 2."

On July 10, 2025, Fortis Advisors, LLC, the representative of Cleveland, McGuire, and Gill, filed suit against Krafton. The court determined that these key employees were not terminated for "cause" as defined in the EPA, and that Krafton's justifications lacked merit. The court ruled in favor of the key employees, and reinstated Gill as CEO of Unknown Worlds with full operational control.

What makes the Krafton case especially noteworthy is how central a role AI played in Krafton's strategy and the Court's ruling. Krafton had attempted to delete his AI chat logs, but Cleveland's, McGuire's, and Gill's legal team pursued and ultimately received responsive information in discovery which revealed the scheme. Ultimately, this led to the Court putting it simply, "Krafton's CEO consulted an artificial intelligence chatbot to contrive a corporate "takeover" strategy." The court placed significant weight on Krafton's use of the AI chatbot to craft strategies aimed at avoiding the earnout, and on the later deletion of those chat logs.

At its core, the issue was how Krafton sought to weaponize AI and mishandled the AI logs in discovery. Krafton's CEO wanted to avoid the earnout obligation, and it went searching for a pretext, which AI ultimately provided regardless of merit. Moreover, the Krafton lawsuit should serve as a clear reminder: AI generated content should be treated like any other email or business document that would be produced in discovery. It must be properly preserved and can give rise to significant adverse inferences if mishandled.

*This article is for informational purposes only and does not constitute legal advice. Always consult with a qualified attorney for guidance on your specific situation. For more infor-mation, please contact Andrew Johnson at andrew.johnson@sfbbg.com or 312-648-2300.*

# Business Registration and Litigation Risk Exposure Post-*Mallory*: Where Can Your Company Be Sued in 2026?

## Notable Outcomes:

SFBBG litigators Adam Glazer and Richard Goldwasser, serving as local counsel, helped secure a $175.5 million jury verdict for Ardagh Metal Packaging USA Corp. in a dispute with a Boston Beer affiliate in the U.S. District Court in Chicago. The jury found in favor of Ardagh and awarded damages based on the defendant's failure to meet its contractual purchase obligations. Pre-judgment interest will now get added to the award, which is expected to increase the total award to above $200 million.

SFBBG litigators Norm Finkel and Adam Hirsch secured a favorable ruling in the U.S. District Court for the Southern District of Florida, where the court granted their motion to dismiss the plaintiff's false advertising and unfair competition claims for lack of personal jurisdiction. The court found that the plaintiff had failed to establish sufficient contacts with Florida under the state's long-arm statute.

SFBBG litigator Jeffrey Heftman obtained a ruling from the United States Court of Appeals for the Seventh Circuit affirming dismissal of an adversary complaint originally filed in the United States Bankruptcy Court for the Northern District of Illinois.

SFBBG litigators Adam Glazer and Andrew Johnson prevailed in an arbitration hearing brought on behalf of a sales representative client against a former principal. Following a weeklong hearing in California, the Panel awarded 100% of the requested commissions, totaling over $750,000. Post-hearing petitions to recover attorney's fees, costs and interest will now follow.

## Welcome Aboard:

The firm is happy to announce the latest addition to our team, Sandra Mertens. Sandra brings a multidisciplinary background in tax, estate planning, and business law, allowing her to provide thoughtful, strategic counsel to individuals and business owners.

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Suppose you own a Wisconsin-based company and you're looking to expand your business operations to Minneapolis and Chicago. As a responsible business owner, you register the company to do business in Minnesota and Illinois. After construction begins on a new storefront in Minneapolis, one of your Wisconsin employees is injured on the job. Hypothetically, could the injured employee come to Illinois and pursue his or her claim in Illinois state court?

Prior to the U.S. Supreme Court's decision in *Mallory v. Norfolk S. Ry. Co.*, 600 U.S. 122 (2023), the answer almost certainly would have been "no," with an explanation offered along the lines of: "Corporate entities are not subject to personal jurisdiction in a foreign state court unless they have 'sufficient minimum contacts' to be rendered 'essentially at home' in the state, and simply registering to do business in a state is insufficient." While these remain core tenets of corporate personal jurisdiction analysis, *Mallory* has made the answer to the hypothetical question above substantially less certain.

The hypothetical mirrors *Mallory*: a Virginia company was sued in Pennsylvania by a Virginia employee injured in Ohio. Faced with that scenario, the Supreme Court said "yes"—because Pennsylvania's business registration statute treats registration as consent to general personal jurisdiction, the employee could sue in Pennsylvania based on the company's registration alone. *Mallory*, 600 U.S. at 126.

In the aftermath of *Mallory*, litigants across the country have similarly attempted to utilize state business registration statutes to "forum shop," or claim that a company's business registration provides a jurisdictional hook to sue the company in that state's more preferable courts. So far, these efforts have been largely unsuccessful. In Illinois, for example, two recent state and federal court opinions have declined to extend *Mallory*, holding that Illinois' business registration statute does not explicitly require companies to consent to the state's general personal jurisdiction to qualify to do business. In *Franco v. Chobani, LLC,* 789 F. Supp. 3d 584 (N.D. Ill. 2025), the court confirmed that states certainly may require corporations to consent to general personal jurisdiction by registering to do business in a state, but Illinois has not imposed such a requirement. Likewise, in *Marilyn Coudrain et al. v. Walgreen Co. et al.*, 2026 IL App (1st) 250614-U,the court held that no applicable Illinois statute has any provision, like the Pennsylvania provision at issue in *Mallory*, that means registering to do business in Illinois requires an out-of-state corporation to consent to jurisdiction in Illinois.

Although a judicial consensus appears to be emerging in Illinois—and in states like New York, Delaware, California, and Texas—against broadly extending *Mallory*, other jurisdictions remain split or unresolved, including Georgia, Minnesota, Iowa, Kansas, and Mississippi. Notably, Illinois legislators have already carved out a limited exception: effective August 15, 2025, amendments to the state's long arm statute and Business Corporation Act permit consent-by-registration jurisdiction for foreign corporations in certain toxic tort cases where jurisdiction exists over at least one codefendant. Whether this provision has yet been tested remains unclear, but it underscores that states are actively responding to *Mallory*, and litigation over these statutes is still in its early stages.

Today, multistate companies or companies considering expanding to other state jurisdictions need to be aware that maintaining business registrations is no longer just a simple matter of corporate housekeeping, but rather merely being registered to do business in a state may subject the company to litigation in that state's courts. This risk will likely increase over time as states following Pennsylvania and Illinois' lead adopt full or modified consent-by-registration schemes. Additionally, with respect to "modified" schemes, the risk may be acute and specific to certain industries—for instance, companies registered to do business in Illinois should identify now whether there are any potential Illinois-facing matters involving toxic substance allegations. Ultimately, because business registration, annual report timing, and withdrawal can now carry material jurisdictional consequences, companies should ensure that those performing corporate secretary roles are well-advised on potential litigation risk and strategy.

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