Lessons From the Subnautica 2 Settlement: AI Chat Logs Supplied CEO's Intent

by Kimberly Tyson

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In this post, Tyson examines a case involving artificial intelligence chat logs as proof of intent, and she points out the need for taxpayers to implement AI use protocols.

Unknown Worlds Entertainment (UWE) is an indie video game company, perhaps best known for Subnautica, an underwater survival adventure. In 2021 UWE was acquired by Krafton Inc. After the acquisition, UWE retained autonomy and control of its operations, and its key employees could be fired only for cause. The acquisition price was $500 million, plus an earnings buyout of up to $250 million if revenue exceeded specified thresholds within a designated period.

During the earnings buyout period, UWE was expected to release Subnautica 2. Sales projections would trigger the earnings buyout, and Krafton's CEO did not want to pay it. His advisers and legal department advised of the terms of the payout and associated risks, but he also consulted ChatGPT for advice on the subject.

These facts are the basis for a lawsuit for breach of contract regarding the terms of the acquisition, UWE's autonomy, and the termination of UWE CEO Ted Gill. See *Fortis Advisors LLC v. Krafton Inc.*, No. 2025-0805 (Del. Ch.). The case was bifurcated, and the Delaware Court of Chancery issued an opinion on Phase 1 of the case on March 16. The opinion addressed performance, operational control, and the Krafton CEO's conversations with ChatGPT, which supplied evidence of intent for the wrongful termination claim.

In AI chats prompted by Krafton's CEO, ChatGPT recommended forming an internal task force to negotiate a deal on the earnings buyout or to execute a takeover of UWE. ChatGPT prepared a report, "Response Strategy to a 'No-Deal' Scenario" (slip op. at 32, 34-35). Following ChatGPT's report, the CEO fired Gill and took control of UWE's website and communications. The court cited these facts when holding that Krafton's reasons for terminating Gill were pretextual. The ChatGPT conversations were evidence of the true purpose, which was to avoid paying the $250 million earnings payout.

Another problem: The CEO deleted some of the chat logs (a big no-no).

What does this case mean? For gamers, the court's opinion was good because UWE got Subnautica 2 to market faster (that is, within the extended period for the earnings buyout). On May 14 Subnautica 2 (early release edition) came out. In its first hour, the game sold over 1 million copies (at about $29.99 each).

On June 30 the second phase of the litigation settled. Krafton agreed to pay bonuses to UWE's entire staff, and Gill agreed to step down.

For lawyers, the case presents lessons about spoliation, corporate governance policies, and how AI can provide evidence of intent, among other things.

Intent

AI conversations are evidence of intent. The court cited the ChatGPT information as evidence in the case, similar to how one would discuss an email or statements in board minutes. When companies were implementing email (meaning back when email was new), executives were apparently unaware of the evidentiary significance of a documentary production of email. The IRS was the beneficiary of those productions during the tax shelter litigation in the aughts, when companies were still implementing email protocols. When responding to a discovery request for AI, consider whether under Tax Court Rule 70(b) the scope of the request is proportional to the needs of the case.

Spoliation

The CEO deleted some chat logs. Had the case not settled, spoliation — here meaning the destruction of evidence — likely would have been an issue in the damages phase of the case.

If litigation is reasonably foreseeable, preservation letters should explicitly reference AI-assisted materials (for example, prompts, outputs, logs, and histories). The consequence for failing to preserve documents falls under Tax Court Rule 104, "Enforcement Action and Sanctions." Under Rule 104(c)(3), the court can dismiss cases for failing to comply with discovery when the failure was willful and in bad faith and the party against whom sanctions are to be imposed "totally failed to respond." *Fox v. Commissioner*, 718 F.2d 251, 255 (7th Cir. 1983); see *Hillig v. Commissioner*, 916 F.2d 171 (4th Cir. 1990) (vacating and remanding the case because although the taxpayers' counsel acted in bad faith, the *taxpayers* should not have been sanctioned); *Douge v. Commissioner*, 899 F.2d 164, 167 (2d Cir. 1990).

Requests for AI Used by the IRS

If an AI request is issued to the IRS, in a *de novo* proceeding, anticipate a relevancy objection and an assertion of the deliberative process privilege (in addition to attorney-client and potentially work product if counsel is involved). The deliberative process privilege shields from disclosure "documents reflecting advisory opinions, recommendations, and deliberations comprising part of a process by which governmental decisions and policies are formulated." *National Labor Relations Board v. Sears, Roebuck & Co.*, 421 U.S. 132, 150 (1975). Regardless of the privilege asserted, the proponent of the privilege bears the burden to show it applies.

Evaluating AI Outputs

AI users should think critically about AI outputs. In the UWE case, Krafton's CEO followed ChatGPT's advice without apparently evaluating its biases and followed a plan that was different than the advice from his company's advisers. The CEO's decision was expensive and embarrassing.

Corporate Governance

Advise organizational clients (and their consultants) to establish AI use policies that balance the efficiency and cost savings of AI with its discoverability. For example, a business may want to limit AI use about sensitive legal issues to the nerve center of the entity and potentially couple its use within protected relationships (such as legal or tax advice), which may protect the activity from disclosure. For example, in *United States v. Heppner*, No. 1:25-cr-00503 (S.D.N.Y.) (ECF 27), Judge Jed S. Rakoff repeatedly stated that his conclusion that a defendant's prompts and outputs with Anthropic's Claude might have been protected from disclosure under either the attorney-client privilege or the work-product doctrine if the defendant's prompts were directed by or at the behest of counsel. (See *Tax Notes Federal*, Mar. 9, 2026, p. 1653. Prior coverage: *Tax Notes Federal*, Apr. 20, 2026, p. 443.)

Engagement Agreements

Advise clients in engagement agreements that AI use might not be protected from disclosure, is not legal advice, and is sometimes incorrect.

AI (and clients' use of it) is not going away. For businesses, AI use that conforms to an established protocol helps ensure speaking with an intentional and authorized voice. Don't let Krafton's experience be that of your clients. ■