

FILED  
03-04-2020  
CLERK OF CIRCUIT  
COURT  
MARATHON COUNTY  
2020CV000160  
Honorable Michael K.  
Moran  
Branch 5

STATE OF WISCONSIN    CIRCUIT COURT    MARATHON COUNTY

---

UNITED FIRE & CASUALTY COMPANY,  
a non-Wisconsin insurance company  
118 Second Avenue SE  
Cedar Rapids, Iowa 52407-3909

Plaintiff,

v.

Case No.  
Case Code: 30701

BEYOND THE OFFICE DOOR LLC d/b/a  
BTOD.COM,  
a Wisconsin limited liability company  
5508 E. Jelinek Avenue  
Weston, Wisconsin 54476

GREG KNIGHTON,  
a Wisconsin resident  
623 Washington Street  
Wausau, Wisconsin 54403

NEXT TECHNOLOGIES INC.,  
a non-Wisconsin corporation  
2530 Shell Road  
Georgetown, Texas 78628-9235

Defendants.

---

## SUMMONS

---

THE STATE OF WISCONSIN, to each person named above as a Defendant:

You are hereby notified that the Plaintiff named above has filed a lawsuit or other legal action against you. The Complaint, which is attached, states the nature and basis of the legal action. Within 45 days of receiving this Summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the Complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be

sent or delivered to the court, whose address is: **Clerk of Circuit Court, Marathon County, 500 Forest St. Wausau, Wisconsin 54403**, and to Plaintiff's attorney, David Turek, whose address is **Gass Weber Mullins LLC, 241 N. Broadway, Suite 300, Milwaukee, Wisconsin 53202**. You may have an attorney help or represent you.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the Complaint, and you may lose your right to object to anything that is or may be incorrect in the Complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 4th day of March, 2020.

GASS WEBER MULLINS LLC  
*Attorneys for United Fire & Casualty Company*

*Electronically Signed by David J. Turek*

David J. Turek, SBN: 1035356

turek@gwmlaw.com

Daniel J. Kennedy, SBN: 1068680

kennedy@gwmlaw.com

Address:

241 N. Broadway Ave., Suite 300

Milwaukee, WI 53202

Telephone: (414) 223-3300

Facsimile: (414) 224-6116

FILED  
03-04-2020  
CLERK OF CIRCUIT  
COURT  
MARATHON COUNTY  
2020CV000160  
Honorable Michael K.  
Moran  
Branch 5

STATE OF WISCONSIN    CIRCUIT COURT    MARATHON COUNTY

---

UNITED FIRE & CASUALTY COMPANY,  
a non-Wisconsin insurance company  
118 Second Avenue SE  
Cedar Rapids, Iowa 52407-3909

Plaintiff,

v.

Case No.  
Case Code: 30701

BEYOND THE OFFICE DOOR LLC d/b/a  
BTOD.COM,  
a Wisconsin limited liability company  
5508 E. Jelinek Avenue  
Weston, Wisconsin 54476

GREG KNIGHTON,  
a Wisconsin resident  
623 Washington Street  
Wausau, Wisconsin 54403

NEXT TECHNOLOGIES INC.,  
a non-Wisconsin corporation  
2530 Shell Road  
Georgetown, Texas 78628-9235

Defendants.

---

## COMPLAINT FOR DECLARATORY RELIEF

---

United Fire & Casualty Company (“United Fire”), by its attorneys Gass Weber Mullins, LLC, for its Complaint against Defendants, alleges as follows:

### **Introduction**

1. This Complaint seeks a declaratory ruling about insurance coverage for Defendants Beyond the Office Door LLC d/b/a BTOD.com (“BTOD”) and Greg Knighton (“Knighton”) related to a lawsuit filed against them by Next Technologies Inc. (“XDesk”) that is currently

pending in the United States District Court for the Western District of Wisconsin (Case No. 3:19-cv-00217) (the “Federal Lawsuit”). In the Federal Lawsuit, XDesk claims that BTOD and Knighton knowingly posted false, misleading, and derogatory on-line reviews of office furniture manufactured and sold by XDesk. The insurance policies issued by United Fire to BTOD do not cover XDesk’s claims in the Federal Lawsuit. Accordingly, United Fire seeks a declaration pursuant to Section 806.04, Wis. Stat., that it has no obligation to defend or indemnify BTOD or Knighton in relation to XDesk’s claims in the Federal Lawsuit.

### **Parties and Venue**

2. United Fire is a corporation formed under the laws of the State of Iowa, with its principal place of business in Cedar Rapids, Iowa. United Fire is authorized to issue property and casualty insurance policies in the State of Wisconsin.

3. BTOD is a Wisconsin limited liability company with its principal office located in Marathon County. Specifically, according to the Wisconsin Department of Financial Institutions, BTOD’s principal office and the office of its registered agent is located at 5508 E. Jelinek Avenue in Weston, Wisconsin.

4. Greg Knighton, upon information and belief, is a member of BTOD who resides within Marathon County.

5. XDesk is a nominal party to this action that has been added pursuant to the instructions in *Fire Insurance Exchange v. Basten*, 202 Wis. 2d 74, 549 N.W.2d 690 (1996). Upon information and belief, XDesk is a Texas corporation with its principal place of business located in Texas.

6. Marathon County Circuit Court is a proper venue for this action because both BTOD and Knighton reside in this County and because BTOD does substantial business in this County.

### **Factual Background**

#### **I. The Underlying Action Against BTOD and Knighton.**

7. On March 21, 2019, XDesk filed a Complaint against BTOD and Knighton in the United States District Court for the Western District of Wisconsin. A true and correct copy of this Complaint is attached as **Exhibit A**.

8. In the Complaint, XDesk alleged that it manufactured treadmill desks and adjustable height desks under the brand named “EvoDesk” and “Xdesk Terra.”

9. XDesk also alleged that BTOD owned and operated the website [www.BTOD.com](http://www.BTOD.com) and an affiliated blog named “The Breakroom Blog.” According to XDesk, Knighton served as the owner and President of BTOD as well as the editor-in-chief of The Breakroom Blog.

10. In the Complaint, XDesk alleged that, on or around November 2017, Knighton published an article on The Breakroom Blog titled “Top 8 Problems and Solutions with NextDesk Terra Standing Desk.” According to XDesk, this article contained “numerous demonstrably false statements of fact” about the Xdesk Terra, including statements about the stability of the desk, mismatched colors on different parts of the desk, the lack of an overload protection or anti-collision system on the desk, and various interactions with XDesk personnel.

11. XDesk alleged that BTOD and Knighton were “fully aware these statements are false and misleading.” According to the Complaint, BTOD and Knighton allegedly made false and misleading statements about XDesk and the Xdesk Terra “to discourage potential customers

from purchasing products from Plaintiff XDesk and to encourage the customers to purchase competing products sold and manufactured” by BTOD and Knighton.

12. XDesk further alleged that, on or around January 16, 2018, Knighton published an article on The Breakroom Blog titled “Top 6 Problems and Solutions with [sic] for the EvoDesk Standing Desk.” According to XDesk, this article also contained “numerous demonstrably false statements of fact regarding [XDesk’s] product, the EvoDesk,” including statements about over lubrication of components, low quality electronic components, and the “T base design of the desk.”

13. XDesk again alleged that BTOD and Knighton were “fully aware that the statements and implications published [in the January 16, 2018 article] are completely false and misleading.”

14. The Complaint alleged that BTOD’s and Knighton’s false and misleading reviews of the Xdesk Terra and EvoDesk have caused substantial harm to XDesk because a large percentage of its business is conducted via the internet and potential customers have been “negatively influenced by the false reviews and [have] elect[ed] not to purchase [XDesk’s] products.”

15. XDesk asserted four causes of action in the Complaint against BTOD and Knighton: (1) defamation *per se*; (2) defamation; (3) tortious interference with existing contractual relations; and (4) tortious interference with prospective contractual relationships. The claims are all premised on the same core allegation that BTOD and Knighton made false statements of fact with intent to harm, interfere with, and otherwise damage XDesk’s commercial relationships with actual and potential customers.

16. In its Complaint, XDesk requested, among other things, compensatory damages, punitive damages, and injunctive relief.

## II. The United Fire Insurance Coverage.

### A. The Primary Policy.

17. United Fire issued a primary insurance policy to BTOD for the policy period February 8, 2017 to February 8, 2018 (the “Policy”). The Policy contained a “Businessowners Coverage Form” that included certain liability coverage. A true and correct copy of the Policy is attached as **Exhibit B**.

18. The insuring agreement for the “Business Liability” portion of the Policy – which is subject to various conditions, exclusions, and other terms – generally covers “bodily injury” and “property damage” caused by an “occurrence” as well as “personal and advertising injury” caused by an “offense arising out of your business.”

19. The Policy defines the phrase “bodily injury” to mean “bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.”

20. The Policy defines the phrase “property damage” to mean either “[p]hysical injury to tangible property, including all resulting loss of use of that property” or “[l]oss of use of tangible property that is not physically injured.”

21. The Policy defines the term “occurrence” to mean “an accident, including continuous or repeated exposure to substantially the same general harmful conditions.”

22. The Policy defines the phrase “personal and advertising injury” to mean “injury, including consequential ‘bodily injury’ arising out of one or more of the following offenses: (a) False arrest, detention or imprisonment; (b) Malicious prosecution; (c) The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor; (d) Oral or written publication, in any manner, of material that slanders or libels a person or

organization or disparages a person's or organization's goods, products or services; (e) Oral or written publication, in any manner, of material that violates a person's right of privacy; (f) The use of another's advertising idea in your 'advertisement'; or (g) Infringing upon another's copyright, trade dress or slogan in your 'advertisement.'"

23. The Policy also contains certain exclusions applicable to the Business Liability Coverage. For example, with respect to "personal and advertising injury," the Policy contains the following exclusions:

- a. Any injury "[c]aused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict 'personal and advertising injury.'"
- b. Any injury "[a]rising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity."
- c. Any injury "[c]ommitted by an insured whose business is: (a) Advertising, broadcasting, publishing or telecasting; (b) Designing or determining content of web sites for others; or (c) an Internet search, access, content or service provider...."
- d. Any injury "[a]rising out of an electronic chatroom or bulletin board the insured hosts, owns or over which the insured exercises control."

24. The Policy also contains, by endorsement, an exclusion for punitive or exemplary damages that states as follows: "Regardless of any other provision of this policy, this policy does not apply to punitive or exemplary damages."

25. The Business Liability Coverage in the Policy does not provide coverage for injunctive or other equitable relief because the insuring agreement applies only to "sums that the insured becomes legally obligated to pay as damages." (underline supplied).



**B. The Umbrella Policy.**

26. In addition to the Policy, United Fire also issued a Commercial Liability Umbrella policy to BTOD for the same policy period of February 8, 2017 to February 8, 2018 (the “Umbrella Policy.”). A true and correct copy of the Umbrella Policy is attached as **Exhibit C**.

27. The Umbrella Policy includes insuring agreements applicable to “bodily injury,” “property damage,” and “personal and advertising injury.” The Umbrella Policy’s definition of those terms is substantively identical to the definitions in the Policy.

28. The Umbrella Policy also contains exclusions to “personal and advertising injury” that are substantively identical to the exclusions in the Policy identified in Paragraph 23, *supra*.

29. The Umbrella Policy contains an exclusion for punitive and exemplary damages that is identical to the exclusion in the Policy identified in Paragraph 24, *supra*.

30. Like the Policy, the Umbrella Policy does not provide coverage for injunctive or other equitable relief because the insuring agreement applies only to “ultimate net loss,” which is limited to “the total sum . . . that the insured becomes legally obligated to pay as damages.” (underline supplied).

**C. United Fire Reserves Its Rights.**

31. Upon receipt of XDesk’s Complaint in the Federal Lawsuit, United Fire delivered a letter to BTOD and Knighton dated May 8, 2019. A true and correct copy of this letter is attached as **Exhibit D**.

32. In the May 8, 2019 letter, United Fire identified relevant portions of the Policy that potentially affected BTOD’s and Knighton’s coverage for the Federal Lawsuit. United Fire further agreed to defend BTOD and Knighton subject to a reservation of rights to, among other things, deny coverage and pursue a “declaratory judgment action against BTOD to determine any

coverage, defense, or indemnity issues arising in this matter and to obtain such other affirmative relief to this it may be entitled.”

33. There is a genuine, ripe dispute as to whether United Fire has an obligation to defend or indemnify BTOD and Knighton in the Federal Lawsuit. A declaration of the rights and obligations of the parties to this lawsuit, if any, under the Policy and Umbrella Policy would terminate this dispute between the parties.

### **Claim for Declaratory Judgment**

34. United Fire incorporates by reference its allegations in Paragraphs 1-33 of this Complaint.

35. United Fire has no duty to defend or indemnify BTOD or Knighton in the Federal Lawsuit for at least the following reasons, which are not exhaustive and do not limit United Fire’s right to raise additional reasons in the future:

- a. None of XDesk’s claims against BTOD and Knighton allege “bodily injury” or “property damage” caused by an “occurrence.”
- b. XDesk alleges that BTOD and Knighton caused injury with knowledge that their actions would violate the rights of another and would inflict “personal and advertising injury.”
- c. XDesk alleges that BTOD and Knighton engaged in the written publication of material that they knew was false.
- d. BTOD and Knighton are engaged in the business of providing “Internet content,” and the claims in the Federal Lawsuit arise from their publication of content on the Internet, namely the November 2017 and January 16, 2018 posts on The Breakroom Blog.
- e. XDesk’s claims against BTOD and Knighton arise out of their postings on an “electronic chatroom or bulletin board” that they host and control.
- f. XDesk seeks punitive damages from BTOD and Knighton, which are excluded in both the Policy and Umbrella Policy.
- g. XDesk seeks injunctive and other relief that do not constitute “damages.”

36. The reasons identified in Paragraph 35 are based on the terms, conditions, limitation, and exclusions contained within both the Policy and the Umbrella Policy.

37. Based on the above terms, conditions, limitations, and exclusions in the Policy and Umbrella Policy, United Fire is entitled to a declaration pursuant to Section 806.04, Wis. Stat., that it (a) has no duty to defend BTOD or Knighton in the Federal Lawsuit; and (b) has no duty to indemnify BTOD or Knighton for any damages or other relief for which BTOD or Knighton may become liable in the Federal Lawsuit.

WHEREFORE, United Fire respectfully seeks the following relief:

- A. A declaration, pursuant to Section 806.04, Wis. Stat., in favor of United Fire and against BTOD and Knighton, declaring that United Fire (i) has no duty to defend BTOD or Knighton in the Federal Lawsuit; and (b) has no duty to indemnify BTOD or Knighton for any damages or other relief for which BTOD or Knighton may become liable in the Federal Lawsuit.
- B. Awarding United Fire its costs, fees, interest, and disbursements; and
- C. Granting any other relief that may be permissible under the law.

Dated this 4th day of March, 2020.

GASS WEBER MULLINS LLC  
*Attorneys for United Fire & Casualty Company*

*Electronically Signed by David J. Turek*

David J. Turek, SBN: 1035356

turek@gwmlaw.com

Daniel J. Kennedy, SBN: 1068680

kennedy@gwmlaw.com

Address:

241 N. Broadway Ave., Suite 300

Milwaukee, WI 53202

Telephone: (414) 223-3300

Facsimile: (414) 224-6116