

PETER L. STEINMAN, ESQ. (SBN 144303)
psteinman@mrlp.com

JANE M. KUTEPOVA, ESQ. (SBN 305254)
jkutepova@mrlp.com

MICHELMAN & ROBINSON, LLP

10880 Wilshire Blvd., 19th Floor

Los Angeles, CA 90024

Telephone: (310) 564-2670

Facsimile: (310) 564-2671

Attorneys for Plaintiff

NEWPOINT FINANCIAL CORP.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION

NEWPOINT FINANCIAL CORP., a
Delaware corporation,

Plaintiff,

vs.

BERMUDA MONETARY
AUTHORITY; GERALD GAKUNDI,
an individual; SUSAN DAVIS-
CROCKWELL, an individual; DOES 1
THROUGH 10, inclusive,

Defendant.

Case No.: 2:22-cv-08659

COMPLAINT FOR:

- 1. TORTIOUS INTERFERENCE
WITH EXISTING AND
PROSPECTIVE ECONOMIC
ADVANTAGE;**
- 2. NEGLIGENT INTERFERENCE
WITH EXISTING AND
PROSPECTIVE ECONOMIC
ADVANTAGE;**
- 3. TRADE LIBEL; AND**
- 4. VIOLATION OF BUSINESS AND
PROFESSIONS CODE SECTION
17200 AND REQUEST FOR
INJUNCTIVE RELIEF**

1 Plaintiff NEWPOINT FINANCIAL CORP. alleges against Defendants BERMUDA
2 MONETARY AUTHORITY, GERALD GAKUNDI, and SUSAN DAVIS-CROCKWELL
3 as follows:

4 NATURE OF ACTION

5 1. This action arises from Defendants Bermuda Monetary Authority (“**BMA**”) and
6 its officials’ Gerald Gakundi and Susan Davis Crockwell (collectively “**Defendants**”)
7 blatant, intentional bad faith malfeasance in denying Plaintiff’s Newpoint Financial Corp.
8 (“**Newpoint**”) application to obtain a controlling interest in a Bermudian insurance company
9 without any, much less good, cause. Compounding Defendants’ bad faith denial of
10 Newpoint’s application, Defendants committed additional malfeasance by publishing false,
11 defamatory, and improper statements regarding Newpoint, as well, as bad faith intentional
12 interference with Newpoint’s existing and future business relations. Further, despite
13 Newpoint’s proper appeal of the erroneous bad faith denial, on information and belief,
14 Defendants have continued their malfeasance and bad acts against Newpoint, including
15 further publication and dissemination of its bad faith denial and further false and derogatory
16 statements regarding Newpoint. Unless the Defendants are restrained, they will continue
17 their malicious crusade against Newpoint to Newpoint’s great and irreparable injury.

18 PARTIES

19 2. Plaintiff Newpoint, was and is, a corporation organized under the laws of
20 Delaware. Newpoint’s principal place of business is 433 North Camden Drive, Suite 725,
21 Beverly Hills, California, 90210. Newpoint is registered to do business in California and is
22 in good standing with the Secretary of State of California.

23 3. Defendant BMA is an agency in Bermuda that generally regulates Bermuda's
24 financial services sector. As relevant to this action, the BMA reviews and approves certain
25 domestic (Bermudian) insurance company transactions, including the purchase and sale of
26 controlling shareholder interests in domestic insurance companies.

27 4. Upon information and belief, Defendant Gerald Gakundi (“**Gakundi**”), is an
28 individual residing in Bermuda. Mr. Gakundi is the Director for the Insurance Supervision

1 Department at the BMA.

2 5. Upon information and belief, Defendant Susan Davis-Crockwell (“**Davis-**
3 **Crockwell**”) is an individual residing in Bermuda. Ms. Davis-Crockwell is the Deputy
4 Director of Enforcement for the Legal Services and Enforcement Department at the BMA.
5 Upon information and belief, Gakundi and Davis-Crockwell engineered and carried out their
6 nefarious, bad faith plan to wrongfully deny Newpoint’s application and to defame, harass,
7 injure Newpoint by, inter alia, publishing and republishing false, malicious, and defamatory
8 statements regarding Newpoint.

9 6. Newpoint is informed and believes and, on that basis, alleges that at all relevant
10 times, the Defendants sued herein as Does 1 through 10, inclusive, and each of them, were
11 and are in some way responsible for the acts and events complained of herein and
12 proximately caused injuries and damages to Newpoint which are described in this complaint.

13 7. Newpoint is informed and believes and, on that basis, alleges that at all times
14 herein mentioned each of the defendants sued as Does 1 through 10 was the agent and
15 employee of the remaining defendants, and in doing the things hereinafter alleged, was
16 acting within the course and scope of such agency and employment. Newpoint will seek
17 leave of court to amend this complaint to set forth those defendants’ wrongful conduct more
18 specifically when it has been ascertained.

19 **JURISDICTION AND VENUE**

20 8. This Court has subject matter jurisdiction over this claim under 28 U.S.C.A.
21 §§1330(a) and 1605. The BMA is subject to this Court’s jurisdiction as it has specifically
22 and expressly waived immunity under Foreign Sovereign Immunity Act. Bermuda
23 Monetary Authority Act, Part II (the BMA can sue or be sued “in its corporate name and
24 may for all purposes be described by that name.”)

25 9. At all relevant times, Defendants purposely committed and directed wrongful
26 acts against Newpoint at Newpoint’s principal place of business in Beverly Hills, California,
27 including transmitting correspondence containing false, defamatory, and malicious
28 statements regarding Newpoint in Beverly Hills, California. Further, Defendants’ past and

1 continuing malfeasance wrongfully interfered with Newpoint's existing and prospective
2 business and economic relationships. Accordingly, venue in the Central District is the proper
3 and this Court has jurisdiction over Defendants because, among other things, the wrongs
4 were committed in, and purposely directed toward, California and, more particularly, in
5 Central District of California.

6 FACTUAL ALLEGATIONS

7 10. On June 16, 2022, Newpoint applied to the BMA to become a controlling
8 shareholder of a Bermudian insurance company, Citadel Reinsurance Company Limited
9 ("Citadel").

10 11. On July 26, 2022, the BMA, and in particular Defendant Davis-Crockwell,
11 transmitted a letter to Newpoint at its principal place of business in Beverly Hills, California
12 indicating that it was considering "objecting" to the transaction, the objection being the
13 functional equivalent of rejecting the transaction. The letter falsely and maliciously claimed
14 that Newpoint was not a "fit and proper person to be the controller of Citadel." Upon
15 information and belief, Defendant Gakundi also drafted, participated in, and/or approved the
16 July 26, 2022 letter and its contents, including the following false statements and claims:

- 17 a. It had received "information" from regulators in multiple jurisdictions"
18 that "Newpoint ... provided information which is not accurate and is
19 misleading as to the status of Newpoint's current ownership of other
20 companies";
21 b. "That Newpoint is unlikely to comply with directions or other regulatory
22 obligations imposed upon it"; and
23 c. That Newpoint fails to meet the "Eligible Capital Rules".

24 12. Each of the statements above were and are demonstrably false. Upon
25 information and belief, the above defamatory, malicious, inflammatory, and false statements
26 were not only provided to Newpoint, but were also provided to third parties through written
27 and verbal publications. Defendants' malfeasance further damaged and injured Newpoint's
28 reputation, good will, and ability to conduct e/xisting business and jeopardizes its ability to

1 conduct future business, including its ability to acquire interests in other insurance
2 companies. Further, unless restrained by this Court, Defendants will continue to publish and
3 disseminate false and defamatory statements regarding Newpoint, to Newpoint's irreparable
4 injury and harm.

5 13. On or about August 19, 2022, Newpoint rebutted each of the false statements
6 contained in the July 26, 2022 letter. Newpoint pointed out, *inter alia*, that Defendants,
7 including the BMA, failed to provide evidence to support the false accusations and
8 conclusions. Newpoint also stated that it had never made any of the supposed submissions
9 or provided "information" to other regulators on which the BMA claimed it had relied.
10 Newpoint also pointed out that the BMA had conflated Newpoint with other companies
11 containing Newpoint in their names. Newpoint stated that the BMA had improperly and
12 prejudicially attributed the undisclosed "secret" findings of "other regulators" that appeared,
13 as far as Newpoint could tell, to be based on wrong, unsubstantiated, unrelated, and
14 unjustified complaints made against another entity or entities.

15 14. On September 30, 2022, the BMA, transmitted to Newpoint at its Beverly Hills,
16 California office its final "objection" thereby rejecting Newpoint's application. The
17 objection was signed by Defendant Davis-Crockwell. Upon information and belief,
18 Defendant Gakundi also drafted, participated in, and/or approved the objection and its
19 contents. In addition to ignoring Newpoint's well founded rebuttal of the BMA's false
20 accusations and defamatory statements, the Defendants doubled down on their malfeasance,
21 again falsely conflating Newpoint with other entities, and vaguely accusing those
22 companies' directors and controllers, Keith Beekmeyer ("**Beekmeyer**") and Andrew Bye
23 ("**Bye**"), of vague misconduct that allegedly supported the BMA's bad faith denial of
24 Newpoint's controlling shareholder application.

25 15. Defendants also further defamed and besmirched Newpoint and its
26 shareholders' reputations by repeating false statements contained in its preliminary
27 objection, including that it "received information from regulators in multiple jurisdictions
28 which confirms that various of the Newpoint Companies have provided information which

1 is not accurate and is misleading as to the status of the Newpoint Companies' current
2 ownership and regulatory status.”

3 16. Defendants' statements and conclusions are flatly false, and Defendants,
4 including the BMA, either knew they were flatly false, or purposely ignored the evidence
5 demonstrating that the statements and conclusions were flatly false, at the time they were
6 made.

7 17. Defendants' defamatory statements were made in bad faith and with malice, as
8 evidenced not only by the above bad faith actions, but also its conduct before Newpoint even
9 filed its application. For example, on or about March 21, 2022, Defendants sent an
10 unprovoked letter to Citadel which contained additional false and defamatory statements
11 about Newpoint, including the following:

- 12 a. The BMA has “significant concerns on the fitness and propriety of
13 Newpoint as a proposed Shareholder Controller”; and,
14 b. The BMA has “concerns that some of the material [provided] included
15 inaccurate, false, and misleading information.”

16 18. Further, upon information and belief, Defendants arranged a call with Citadel,
17 where it perpetuated and disseminated these and other falsehoods and continued their
18 malicious efforts to injure Newpoint.

19 19. Indeed, upon information and belief, the BMA had predetermined it was going
20 to deny any application by Newpoint to acquire a controlling interest in Citadel – **at least**
21 **three months** before Newpoint even submitted its application. Each wrongful act was
22 perpetrated in furtherance of Defendants' malicious and unjustified crusade against
23 Newpoint.

24 20. Newpoint believes Defendants' prejudicial bias, defamatory remarks, and
25 unfounded allegations stem, at least in part, from a complaint from the Gibraltar Regulatory
26 Authority, which itself was based on unfounded and irrelevant allegations that have since
27 been proven false or have been amicably resolved. Nevertheless, Defendants, in bad faith
28 and with malice, refused to examine and consider the overwhelming evidence Newpoint

submitted regarding same, and rebutting the false and defamatory statements and spurious conclusions contained in the BMA's objections.

21. Newpoint has suffered and will continue to suffer damages due to Defendants' malfeasance, including their malicious, false, and defamatory statements.

FIRST CAUSE OF ACTION

Tortious Interference with Existing and Prospective Economic Advantage (Against All Defendants)

22. Newpoint realleges and incorporates paragraphs 1 to 21 as if fully set forth herein.

23. A contractual agreement, in principle, existed between Citadel, Citadel related entities (collectively, the "**Citadel Group**") and Newpoint to acquire a controlling shareholder interest in Citadel.

24. A prospective economic relationship also existed between Newpoint and the Citadel Group, regarding the instant transaction and potentially other transactions.

25. The Defendants were not parties to the stock purchase agreement or the economic relationship.

26. The Defendants were fully aware of Newpoint's contractual and economic relationships with the Citadel Group, including Newpoint's prospective economic relations with the Citadel Group.

27. The Defendants intentionally and in bad faith interfered with Newpoint's contractual relationship and prospective economic relations with the Citadel Group by engaging in the conduct alleged above, including but not limited to intentionally publishing and republishing false and defamatory statements about Newpoint.

28. The Defendants were fully aware that, due to their actions, disruption was certain or substantially certain to occur in Newpoint's relationship with the Citadel Group.

29. The Defendants' interference with Newpoint's contractual and economic relationships was perpetrated in bad faith. The Defendants had no legitimate reason or business interest in committing the malfeasance detailed above.

30. Defendants' past malfeasance and threatened continuing malfeasance interfered and will continue to interfere with Newpoint's prospective economic relationships with other insurers, as upon information and belief, the BMA has already shared and/or threatened to share its malicious, false, and defamatory statements to other regulators.

31. The Defendants' wrongful actions have resulted in actual disruption of the prospective economic relations alleged in this complaint, as Newpoint is unable to move forward with the purchase of Citadel's shares.

32. As a direct and proximate result of the Defendants' malfeasance, Newpoint's agreement(s) with the Citadel Group to purchase a controlling interest in Citadel have been rescinded.

33. By interfering with Newpoint's prospective economic relationship with the Citadel Group, Defendants blocked Newpoint from the prospective benefits thereof. Newpoint has suffered and stands to suffer substantial harm resulting from the disruption of this relationship, all in an amount in excess of the minimum jurisdiction of this Court.

34. Defendants' intentional acts were the proximate cause of Newpoint's damages, including Newpoint's inability to complete the purchase of the Citadel Group's shares and become the Controlling Shareholder of Citadel. The same misconduct has damaged Newpoint's prospective economic relations with the Citadel Group, and the Citadel. Defendants' continuing malfeasance will also interfere with Newpoint's prospective economic relations with other companies, including other insurers.

35. Defendants' conduct was undertaken with malice, oppression and/or fraud, and was willfully, maliciously, and oppressively committed with the intention of causing Newpoint to suffer extreme harm, warranting the imposition of punitive damages against the Defendants for the reasons set forth herein. Newpoint thus seeks punitive damages against Defendants, and each of them, for their willful, wanton, and malicious behavior by interfering with Newpoint's economic relationship with the Citadel Group, a relationship which the Defendants had no legitimate reason to hinder or stop.

36. As a direct and proximate result of the Defendants' malfeasance, Newpoint has

1 been damaged in an amount exceeding, but not less than, \$25,000,000.00.

2 **SECOND CAUSE OF ACTION**

3 **Negligent Interference with Existing and Prospective Economic Advantage**
4 **(Against All Defendants)**

5 37. Newpoint realleges and incorporates paragraphs 1 to 36 as if fully set forth
6 herein.

7 38. The Defendants wrongfully, and unreasonably, interfered with Newpoint's
8 existing relationship and prospective economic relations with the Citadel Group by engaging
9 in the conduct alleged in this complaint, including but not limited to spreading false,
10 malicious, and defamatory statements about Newpoint without doing proper due diligence
11 and ignoring the true facts.

12 39. The Defendants undertook the wrongful acts as alleged in this complaint
13 without proper cause and in contravention of the true facts to which they were provided.
14 Defendants' malfeasance did disrupt the prospective economic relationship between
15 Newpoint and the Citadel Group.

16 40. The Defendants' interference with the contractual relations between Newpoint
17 and the Citadel Group was unwarranted and wrongful. Defendants failed to take the proper
18 steps in order to ascertain the truth of the false, malicious, and defamatory statements against
19 Newpoint prior their publication and prior to interfering with and destroying Newpoint's
20 contractual and economic relations with the Citadel Group.

21 41. The Defendants' wrongful actions have resulted in actual disruption of the
22 prospective economic relations alleged in this complaint, as Newpoint is unable to move
23 forward with the purchase of Citadel's shares.

24 42. By interfering with Newpoint's prospective economic relationship with the
25 Citadel Group, the Defendants blocked Newpoint from the prospective benefits thereof.
26 Newpoint has suffered and stands to suffer substantial harm resulting from the disruption of
27 this relationship, all in an amount in excess of the minimum jurisdiction of this court.

28 43. As a direct and proximate result of the Defendants' bad faith actions,

1 Newpoint's agreement(s) with the Citadel Group to purchase a controlling interest in the
2 Citadel have been rescinded.

3 44. The Defendants failed to act with reasonable care.

4 45. The Defendants' negligent and wrongful acts were the proximate cause of
5 Newpoint's inability to complete the purchase of the Citadel's shares and become the
6 Controlling Shareholder of Citadel and has damaged Newpoint's prospective economic
7 relations with the Citadel Group, and the Citadel. Defendants' continuing malfeasance will
8 also interfere with Newpoint's prospective economic relations with other companies,
9 including other insurers.

10 46. As a direct and proximate result of the Defendants' actions, Newpoint has been
11 damaged in an amount exceeding, but not less than, \$25,000,000.00.

12 **THIRD CAUSE OF ACTION**

13 **Trade Libel**

14 **(Against All Defendants)**

15 47. Newpoint realleges and incorporates paragraphs 1 to 46 as if fully set forth
16 herein.

17 48. The Defendants' published the false statements alleged above in writing about
18 Newpoint.

19 49. On information and belief, these statements were also provided to third parties.

20 50. On information and belief, the Defendants also verbally reiterated these
21 statements to third parties.

22 51. The foregoing libelous and slanderous statements were not then, nor are they
23 now, privileged.

24 52. Defendants' expressed intention in publishing the libelous statements and
25 verbally repeating the defamatory statements was to disparage and embarrass Newpoint and
26 to cause damage to Newpoint's reputation and standing in the business community, with
27 resultant loss of income and opportunity to Newpoint.

28 53. The Defendants intentionally, in bad faith, and with malice made the untrue and

1 prejudicial defamatory statements.

2 54. As a direct and proximate result of the Defendants' libelous and slanderous
3 statements, Newpoint's relationship with Citadel (as well as others) was actually disrupted.

4 55. As a direct and proximate result of the Defendants' libelous and slanderous
5 statements, Newpoint has suffered economic harm in an amount to be proven at trial, but no
6 less than \$25,000,000.00.

7 **FOURTH CAUSE OF ACTION**

8 **Violation of Business and Professions Code Section 17200**

9 **(Against All Defendants)**

10 56. Newpoint realleges and incorporates by reference paragraphs 1 through 55 as if
11 fully set forth herein.

12 57. Defendants' wrongful conduct as alleged in this complaint constitutes unlawful
13 and/or unfair business acts or practices under California Business and Professions Code
14 section 17200. Defendants' conduct, inter alia, violates the common law prohibition of
15 intentional or negligent interference with contractual and prospective economic relations, as
16 well as trade libel.

17 58. As a direct and proximate result of the Defendants' unlawful and/or unfair
18 business acts or practices, Newpoint has suffered injury and harm, and will continue to suffer
19 injury and harm, unless the Defendants' are enjoined from the conduct alleged in this
20 complaint and are ordered to stop making false, malicious, and defamatory comments about
21 Newpoint.

22 59. Newpoint is entitled to an injunction prohibiting the Defendants' unlawful
23 and/or unfair, business acts or practices.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them, as follows:

1. For damages in an amount to be proven at trial, but no less than \$25,000,000.00, plus interest thereon at the legal rate until paid in full;
2. For punitive and exemplary damages;
3. For its reasonable attorney's fees;
4. For costs of suit incurred herein;
5. For an injunction, enjoining the Defendants from making defamatory statements regarding Newpoint; and,
6. For such other and further relief as the Court deems just and proper.

MICHELMAN & ROBINSON, LLP

Date: November 29, 2022

By: /s/ Peter L. Steinman

Peter L. Steinman

Jane M. Kutepova, Esq.

Attorneys for Plaintiff

NEWPOINT FINANCIAL CORP.