

Theodor van Sante

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Year Of Call: **2009**



Ranked in the Legal 500 2022 directory across five practice areas, Theodor has a commercial practice with particular specialisms in financial services, banking and insurance matters, as well as cases involving judicial review, professional negligence and consumer regulation compliance.

He is described as '**a junior with a powerful brain**', '**efficient with his time and commercial in his approach**', with a '**great ability to simplify a complex and multi-faceted set of facts**', '**organised, well-prepared, passionate, persuasive and assertive**'. His '**advice is practical and easy to understand. He has a very good client manner**' and is '**listened to by clients on calls and very responsive to instructing solicitors**'.

In Court he is noted for being '**very good at identifying inconsistencies and contradictions in the respondents' case and has impressive powers of forensic analysis**' and as having '**made his submissions forcefully and effectively**'. Seconded to both the FSA and then the FCA and frequently instructed by the financial regulators, Theodor is particularly noted for his financial, consumer and insurance regulatory work. His '**technical knowledge in this area is unsurpassed**', is '**fabulously insightful into how the regulator sees disputes**' and '**very good on insurance principles**'.

Theodor is frequently instructed in high-profile commercial litigation in these areas, including both the multi-billion pound capital-raising claims to arise out of the financial crisis: *the RBS Rights Issue Litigation* and *PCP Capital Partners LLP v Barclays*. He has also been acting in two arbitrations concerning insurance liability disputes; as well as in *Allianz v J.D. Williams* (a Commercial Court dispute concerning liabilities for insurance redress) and *Lee & ors v James Hay & ors* (a High Court dispute concerning the regulatory obligations of pension administrators' and trustees); and the successful trial of banking fraud in *NCA v Odewale & NatWest* [2020] EWHC 1609 (Admin).

Theodor is also instructed for an international insurer in an ongoing judicial review of the Financial Ombudsman Service concerning its jurisdiction to consider complaints.

Theodor also advises on and acts in financial transactions, and has recently been instructed as sole counsel on a number of Part VII transfers of insurance business and schemes of arrangement, including *Re Prudential Assurance Company* [2021] EWHC 3152 (Ch), *Re Legal and General Assurance Society* [2020] EWHC 756 (Ch) & [2020] EWHC 2299 (Ch), *Re Equitable Life Assurance Society* [2019] EWHC 3336 (Ch), and *Re Royal London Mutual Insurance Society* [2018] EWHC 3803 (Ch). He is presently instructed in relation to a number of further such transfers and

schemes.

Theodor also routinely advises on financial regulatory compliance, enforcement and other regulatory actions on behalf of individuals, firms and regulators.

Directory Quotes

'Listened to by clients on calls and very responsive to instructing solicitors.'

Legal 500 2022

'Theodor's technical knowledge in this area is unsurpassed. His advice is practical and easy to understand. He has a very good client manner.'

Legal 500 2022

Expertise

Banking & Finance

Theodor has strong experience in banking and finance disputes, including both investment banking disputes as well as retail banking. He is been consistently ranked in Legal 500 since 2020 as a leading junior for his work encompassing consumer and regulatory disputes involving banks and is described as '**efficient with his time and commercial in his approach**' and '**a junior with a powerful brain**'.

Theodor has experience of banking and finance litigation at the highest level of complexity, having been instructed in multi-billion pound litigation by RBS in the *RBS Rights Issue Litigation* and the SFO in *PCP Capital Partners LLP v Barclays*.

Theodor has also been instructed in finance cases involving fraud, including on the \$65 million Commercial Court claim in *PGI v Dillard & Ors* concerning breaches of warranties given on the acquisition of the Liongate hedge fund business by PGI, arising out of the Bernie Madoff fraud. He was also instructed in *NCA v Odewale & NatWest* [2020] EWHC 1609 (Admin) concerning recovery of the proceeds of ID thefts from NatWest and for various banks in *USA v Abacha* [2014] EWHC 993 (Comm).

He also regularly appears for banks in customer banking disputes, including the reported decisions in: *GBQ v Mortgage Express* [2018] EWHC 2536 (Ch), *Fondazione Enasarco v Lehman Brothers Finance SA* [2014] EWHC 34 (Ch) and *Shah v Royal Bank of Scotland International Limited* [2013] EWHC 2431 (QB).

Theodor is author of several chapters on banking law in leading practitioner texts, including on financial advice by banks and securities law and has been instructed to prepare expert reports on

English banking law to foreign Courts in Paris and New York.

Theodor also has experience of urgent interim applications in banking matters, including in relation to preservation of security (which in one instance included an entire airfield) and obtaining injunctions in urgent cases.

Financial Services

Theodor has wide experience in financial services cases and advice, having been seconded to the FSA and the FCA and recently instructed on various high-profile pieces of litigation with regulatory issues, including the *RBS Rights Issue Litigation*, *PCP Capital Partners LLP v Barclays*, and *PGI v Dillard & Ors*.

Ranked in Legal 500 2022 as a leading junior in for financial services work, he has been described as having '**great ability to simplify a complex and multi-faceted set of facts. Organised, well-prepared, passionate, persuasive and assertive**' and being '**fabulously insightful into how the regulator sees disputes.**' His '**technical knowledge in this area is unsurpassed. His advice is practical and easy to understand. He has a very good client manner.**'

Theodor is presently instructed on a number of high-value cases as junior Counsel concerning financial services regulation, including a multi-million pound disputes about liabilities for PPI mis-selling in *Allianz v JD Williams*, litigation in *Lee & ors v James Hay & ors* arising out of the *Berkeley Burke* case-law for pension operators and trustees, and several high-value insurance cases. He also has experience acting as sole Counsel, including the sole authority considering the pensions exemption for collective investment schemes in *Ian Gray v Investments Ltd* [2016] EWHC 724 (Ch).

Theodor has also been regularly instructed to advise on and act in financial services transactions. This includes instructions from the FCA on a number of Part VII transfers under FSMA, including most recently *Re Prudential Assurance Company Ltd* following the decision in the Court of Appeal, in *Re Legal and General Assurance Society* [2020] EWHC 756 (Ch) and *Re Rothesay Assurance Ltd* [2016] EWHC 44 (Ch). He also has acted on two recent schemes of arrangement in *Re Equitable Life Assurance Society* [2019] EWHC 3336 (Ch) and *Re Royal London Mutual Insurance Society* [2018] EWHC 3803 (Ch).

Present instructions including a number of further such transactional cases involving Part VII transfers and/or schemes of arrangement, both for the regulators and firms.

Theodor also has a wide-ranging advisory and enforcement practice, providing advice on compliance across the span of regulation. This has included:

- advising a challenger firm on the entirety of its authorisation process and approval of relevant senior managers to the PRA and FCA;
- advising individuals on enforcement proceedings concerning breach of requirements applying to approved persons concerning acceptance of inducements;
- advising on authorisations, permissions, variations of permission, waivers and modifications, establishment of UK branches and passporting, and change of control approvals, by various established firms and their groups;

- advising on potential schemes of arrangement concerning regulatory liabilities;
- advising a new investment platform on regulatory compliance concerning the issuance of tokenised securities;
- advising on the implementation of redress schemes intended to be imposed on or agreed with a number of types of firms;
- advising a publicly listed company on the pursuit of market abuse in its shares;
- advising a major property fund on regulatory compliance for selling the fund in the UK and European markets;
- advising a major fund on compliance with regulatory requirements in relation to its remuneration policies;
- advising firms on regulatory compliance with a number of aspects of fund regulation, including AIFMD, the structuring of various types of collective investment scheme, including UCIS, ACS, AUT and OEIC entities;
- advising a major international bank on derivative trade clearing requirements and the application of EMIR;
- advising on the regulatory implications of the structuring of various regulated businesses, including moving the headquarters to other jurisdictions and the design of compliant international sales channels;
- advising on unfair terms in the context of regulated firms;
- advising numerous different lenders, ranging from small businesses, to schools, to family partnerships, through to major banks, on compliance with consumer credit and FCA lending-regulation.

This advisory experience extends to considering applications for judicial review in relation to decisions of ombudsmen and regulators, having been instructed by the FSA in relation to the most high-profile judicial review case in recent times, the PPI judicial review: *R (British Bankers' Association) v FSA & FOS* [2011] EWHC 999 (Admin).

Insurance

Theodor has a strong practice spanning both traditional insurance litigation as well as advice, litigation and transactional work arising from insurance regulation. Ranked as a leading junior in Legal 500 2022 for insurance work, he has described as '**admirably prepared and made his submissions forcefully and effectively**' and '**very good on insurance principles**'.

Present and recent instructions include a dispute concerning coverage under two professional liability policies; an arbitration concerning liabilities of over £100m under a policy of political risk insurance; a Commercial Court dispute in *Allianz v JD Williams* concerning insurance mis-selling liabilities of over £50m; an arbitration dispute concerning liabilities of over £60m for insurance mis-selling; the *AXA v Genworth* litigation; and advising a major insurer on regulatory liability. Other examples of insurance regulatory work are set out in Financial Services section.

Recently, Theodor has been instructed by on a number of Part VII insurance-business transfers under FSMA, including most recently the on *Re Legal and General Assurance Society* [2020] EWHC 756 (Ch) and *Re Rothesay Assurance Ltd* [2016] EWHC 44 (Ch). He also has experience acting on other transactions involving insurers, including schemes of arrangement, including in *Re Equitable Life Assurance Society* [2019] EWHC 3336 (Ch), and *Re Royal London Mutual Insurance*

Society [2018] EWHC 3803 (Ch), a scheme of arrangement concerning the compromise of guaranteed annuity returns.

Present instructions including a number of further such transactional cases involving Part VII transfers and/or schemes of arrangement, both for the regulators and firms. Past involvement includes transfers involving: Fuji, AIG, Chevanstell, Marine & General Mutual, Nipponkoa, Rothesay, Steamship Mutual, Cash4Health, Starr, Baloise, Royal London, Equitable, Swiss Re, Utmost, Monument Life and ReAssure.

Professional Negligence

Theodor has a wide practice encompassing professional negligence of many forms, principally focusing on negligence by financial professionals, lawyers, accountants and valuers. Ranked as a leading junior in Legal 500 since 2021 for professional negligence, in particular with reference to negligence by financial professionals and disputes arising within the context of finance and financial services, he is described as '***fabulously insightful into how the regulator sees disputes.***'

Present and recent instructions encompassing allegations of negligence against professionals include:

- Commercial Court litigation in *Allianz v JD Williams* concerning allegations of professional negligence concerning the handling of insurance complaints;
- *Lee v James Hay & Ors* concerning duties of care owed by pension operators and trustees in relation to investments held in a SIPP;
- an arbitration concerning allegations of professional negligence concerning the selling of insurance;
- *Ian Gray & Associates v Investments Ltd* [2016] EWHC 724 (Ch) concerning a dispute about negligent advice on regulatory compliance;
- *Deutsche Pfandbriefbank v BNP Paribas REA* in litigation concerning valuations of commercial property in 'Little Britain' in the City of London and securitisation of the acquisition;
- *PGI v Dillard & Ors* concerning breaches of warranties concerning standards of professional conduct in the operation of a hedge fund;
- *LRC Holdings Ltd v BNP Paribas REA* in litigation concerning valuations of commercial property concerning the Royal Mint site in the City of London and securitisation of the acquisition;
- *Raymond Bieber & Ors v Teathers Limited* [2012] EWHC 190 (Ch) in litigation concerning the professional operation of film finance partnerships.

Theodor also maintains a practice in advising on negligence or other breach of duty in the context of insolvency actions by professionals engaged in insolvency, including office-holders, administrators, liquidators and solicitors and valuers, including concerning the entering into of settlement agreements and disposals of property. He was also instructed in Chancery Division litigation in *1st Land (in liquidation) v Grossman & Ors* for the liquidators of 1st Land concerning the failed development of Sixfields Stadium for Northampton Town Football Club.

Academic

B.Sc. Economics, London School of Economics (2006)

M.S. Management Science & Engineering, Stanford University (2007)

GDL, City University Law School (2008)

M.St. International Relations, Cambridge University (2016)

Publications

Author of "Liability of banks for advice on regulated financial products", Practical Law (2021)

Author of chapters on securities law and injunctions, Bullen & Leake (2019)

Co-author of Principles of Banking Law (ed. Mr Justice Cranston) (2018)

Author of chapter on liability for financial advice, Paget's Law of Banking (2018)

Former co-editor of European Banking Law division, Encyclopedia of Banking Law (ed. Mr Justice Blair) (2017)

Languages

Theodor has a working knowledge of French and basic Dutch.