



After loading my luggage into his blue Maserati, we sped along the serpentine route toward Monte Carlo. Toussaint played the tour guide, pointing out the buildings where various celebrities had lived and died, describing the preparations for an upcoming Formula One race and mocking the antiseptic glitz suffusing every inch of the principality. He explained that he moved here from Cologne four years ago because his wife and twin boys had been threatened by a “green-eyed Chechen” who demanded he cease his art world sleuthing. (His detractors scoff that he decamped for tax reasons.)

To enter the high-security complex where Toussaint lives requires a series of cards and codes. A minute’s walk away sit eight private heliports, from which a constant whir emanates throughout the day. As we parked, he recounted how one of his neighbors, an American financier, buys all the models Mercedes makes every year. In the midst of such ostentation, Toussaint seemed misplaced. His low-key personality that day contrasted sharply with his public persona—the take-no-prisoners, high-living character seen in a German TV documentary tooling around in a Jaguar, the man who allowed a film crew to follow

THIS PAGE: FILM STILL BY ADAM BEINASH, © CINE IMPULS, BERLIN; OPPOSITE: SOTHEBY'S NEW YORK

the devil and the art detective

98

Critics say he’s downright sinister. Others see him as a force for good.

What’s the truth about looted art hunter Clemens Toussaint?

by Marc Spiegler

WHEN CLEMENS TOUSSAINT, one of the art world’s most controversial figures, invited me to his Mediterranean home for an interview last year, he refused to reveal where he lived. “Just buy a plane ticket for Nice, and I’ll meet you at the airport,” he instructed me. “You can stay in my son’s room.”

With the Cannes Film Festival in full swing, the airport was teeming with fashionable A-list types sporting designer luggage. By contrast, Toussaint looked like a man who’d just nipped out for Saturday morning’s milk—unshaven, in jeans and a windbreaker. At 42 he suggests a less handsome though equally intense version of American actor Robert Duvall. The hair surrounding his bald pate tends to flare upward, forming small, wispy horns. That almost impish appearance is perhaps fitting for a man whose critics—and there are plenty—consider him a continual source of art world strife.

Toussaint, pictured above in a still from a German TV documentary, helped the heirs of Kasimir Malevich recover Suprematist Painting, *Rectangle and Circle*, opposite, from Harvard. It was bought in at Sotheby’s May sale at \$4.6 million, some say because it had been shopped around

Travel is a constant for the art restitution specialist, whose business is recovering stolen artworks, particularly those that disappeared during World War II. It’s a messy and emotional—but potentially lucrative—field, and Toussaint ranks among the best at his profession, or worst, depending upon your perspective.

Toussaint explained that he had just driven down from Paris, where he was doing research for one of his cases. Travel is a constant for the art restitution specialist, whose business is recovering stolen artworks, particularly those that disappeared during World War II. It’s a messy and emotional—but potentially lucrative—field, and Toussaint ranks among the best at his profession, or worst, depending upon your perspective.



him into the shower. His condominium, though spacious, is hardly extravagant. It features a modest collection of art, including a Cy Twombly drawing, a small Kurt Schwitters collage, several works by lesser-known contemporary photographers and his favorite, one of Lucio Fontana's signature slashed canvases. Toussaint fetched a bottle of red wine from his cellar, and we sat down to discuss his biggest case at that moment, a claim for Wassily Kandinsky's masterpiece *Improvisation No. 10*. Sophie Küppers, an arts patron whose circle included Kandinsky and Paul Klee, had bought the painting in 1919 from the renowned Galerie



Toussaint's longtime client and friend, Jen Lissitzky, suddenly turned on him last year. "He called one day and said, 'Never dial my number again,'" says Toussaint

Der Sturm in Berlin. When she moved from Germany to the Soviet Union in 1927 to marry El Lissitzky, the Russian Constructivist, she lent the work and a dozen others to the Provinzial Museum in Hanover. In 1937 they were seized by the Nazis as "degenerate art," and some disappeared forever.

The Kandinsky, however, ended up with Cologne dealer Ferdinand Möller, who sold it to Swiss gallerist Ernst Beyeler in 1951. It was Beyeler's first masterpiece. Four decades later, armed with research conducted by Toussaint, Jen Lissitzky, the only child of Küppers and El Lissitzky, approached Beyeler to demand the painting's return. In 2002, after years of fruitless negotiations, Lissitzky filed suit against the Basel foundation Beyeler had set up for his collection.

As Toussaint discussed the case, he seemed strangely restrained and nervous. Then, three glasses into the bottle of wine, he dropped a bombshell: Lissitzky, his longest-term client, had broken off contact. "For years we spoke every week and discussed new developments in the Beyeler lawsuit," he explained. "Suddenly he called one day two weeks ago and said, 'Never dial my number again.'" Toussaint immediately flew to Spain and then drove to Ronda, the rural Andalusian town where Lissitzky lives. But his client refused to see him. Over the years, he told me, Lissitzky had become a friend, almost family, and Toussaint seemed legitimately concerned that he'd had a stroke or was being physically threatened.

Yet it was clear Toussaint had started to imagine the unimaginable. "I'm worried that Beyeler is trying to buy him out," he said, his face betraying anger and disbelief. "I would be shocked if Jen takes the

money and runs." But that's exactly what happened. Scarcely two months after our meeting in Monaco, the Fondation Beyeler announced it would keep the Kandinsky, having reached a settlement with Jen Lissitzky and his step-relatives from Sophie Küppers's first marriage. No figures were divulged, but Munich lawyer Heiner Köster, Lissitzky's legal counsel in Germany until he split with Toussaint, says, "The estimated value of the Kandinsky was around \$30 million. Anything less than a third of that figure would have been disappointing." Regardless, Toussaint's cut in the deal was clear: zero.

FROM A FINANCIAL STANDPOINT, Lissitzky's about-face was catastrophic for Toussaint. Over the past three years alone, Toussaint says he spent more than \$3 million in expenses and legal fees on the case and invested at least 3,000 hours of his own time. But even if he could absorb the fiscal damage, the surprise settlement threatened the very business model Toussaint had created for his high-profile restitution cases.

Well-known in the German-speaking world, where journalists often refer to him as der Kunstdetektiv ("the art detective"), Toussaint tends to inspire strong feelings. Some see him as a David helping beleaguered families to reclaim what is rightfully theirs, but to others he is a profiteering Goliath, using slash-and-burn tactics to strip art from innocent buyers and public museums for his own financial gain. Particularly galling to some is his practice of charging a contingency fee that often equals half the value of the recovered work. For Toussaint, every restitution case is a high-stakes gamble—and he plays to win.

Though not a lawyer, Toussaint often acts like one, aggressively using the courts and playing the media game to his advantage. He doesn't hesitate to threaten lawsuits—and he occasionally follows through—against journalists who he feels have unfairly attacked his reputation. The fact that Toussaint cuts such a large figure in the European media is one of the things that rankles the discreet power players of the art world. When the cameras are rolling, he has a consummate stage sense. At a notorious Frankfurt press conference held last year to promote a book attacking him, he showed up late, waited until things had reached a fever pitch and then drolly announced himself from the back of the room: "My name is Clemens Toussaint, and I am a gangster, murderer and the devil himself."

Toussaint meant it ironically, but his harshest critics would no doubt welcome the hyperbole. His polarizing power is so strong that normally level-headed people will sink into conspiracy theories when talking about him. The misdeeds attributed to him include falsely claiming to have achieved certain restitutions, transporting stolen art and convincing claimants to sign contracts that award him excessive fees.

"Toussaint says he's giving the little guys a chance, but his basic idea is to make a lot of money," contends Mathias Rastorfer, director of the prominent Cologne dealership Galerie Gmurzynska, against whom Toussaint harbors a long-running, and entirely mutual, animus. "In my opinion, he's been going way overboard with his manipulation of the press. His restitution tactics are almost like blackmail because museums are so afraid of the bad publicity, they feel they have no choice." (There are others who share Rastorfer's views but decline to voice them publicly.)

German collector Henry Newman—who hired Toussaint to assist in the ultimately successful claim for Monet's *Le repos dans le jardin, Argenteuil*, at the Metropolitan Museum of Art—has a different view. "He reads every dossier, dives into problems and notices all the details," says Newman, obviously a satisfied client. "Toussaint is always prepared to fight to the end, and he's honest. Yes, he's expensive, but it's the price of a job well done. And if you lose, it doesn't cost you anything."

Toussaint's greatest triumph came a few years ago, after he orchestrated a claim against the Museum of Modern Art (MoMA) by all 31 descendants of the artist Kasimir Malevich. The claim, first lodged in 1992, demanded restitution of six Malevich paintings that had originally been brought to the U.S. by MoMA's first director, Alfred Barr, and were long denoted as extended loans before being folded without explanation into the museum's permanent collection. In 1999, following contentious negotiations, the Modern handed over \$5 million and returned one masterpiece, *Suprematist Composition*, to the heirs. Put up for sale in May 2000 at Phillips Auctioneers in New York, the painting brought \$17 million—and a handsome payday for Toussaint.

The outcome was far less favorable this season, when the heirs put another, smaller Malevich on the block in New York. On May 6, Sotheby's offered the 1915

for toussaint, every restitution case is a high-stakes gamble— and he plays to win

Suprematist Painting, Rectangle and Circle, which had been recovered with Toussaint's help from the Busch-Reisinger Museum at Harvard University four years ago. Estimated at \$5 million to \$7 million, it failed to find a buyer, crashing unsold at \$4.6 million. Post-sale chatter attributed the failure to the somewhat narrow market for Suprematist works and to the fact that it had already been shopped around privately. "This painting was offered to us at \$10 million before being consigned at Sotheby's," says prominent New York art adviser Thea Westreich. "We were led to believe it was an exclusive offer, but I started hearing it was offered around to other people, at prices from \$8 million to \$12 million. That's the wrong way to handle work of such colossal importance."

Toussaint acknowledges that he had discussions with two American museums about possibly acquiring the painting, but he says that if the work was shopped around, it was done by unauthorized parties. As for the reasons why the painting didn't sell at Sotheby's, he suggests, "Maybe it was too small for the price. Maybe all this controversy over Malevich made people nervous. There were institutions interested beforehand, so now we just have to let Sotheby's do its after-sale work."

Ultimately that disappointment was minor for Toussaint compared with losing Beyeler's Kandinsky, which would have been an even bigger score than the Malevich sold at Phillips. In the aftermath of the Kandinsky case, Toussaint seriously contemplated abandoning the art restitution business. Instead he decided to file suit against Lissitzky in the German courts for breach of contract, charging that he was owed half the Beyeler settlement. "The press will go crazy," he predicted at the time. "But I have to know whether this arrangement is enforceable. If not, then every client could just kick me out into the rain. Is my only future in America, where people understand the concept of contingency? Or do I just leave the field altogether and let people find their own things?"

His chances of winning seem somewhat scant. Typically, U.S. contingency contracts include stipulations preventing the client from settling the case behind his representative's back, but the five-year agreement Toussaint and Lissitzky signed in 1999 does not even cover that possibility. It hardly helps Toussaint's case that Europeans tend to look askance at contingency agreements. While they are a common feature of the American legal landscape—used in cases ranging from icy-sidewalk falls to massive class-action suits—most legal systems in Europe expressly forbid lawyers from such deals.

Yet on February 6, Toussaint won a first victory in his case, when a Frankfurt judge decreed that Lissitzky must reveal to Toussaint the terms of his set-

tlement with Beyeler. Toussaint, with his usual theatrical flair, declared that "the judge's decision redeemed my honor, because she ruled that without my work in bringing a legal case and creating public pressure, Beyeler would never have settled. It validates the professionalism of my work, and it also shows that a client can't use my time and money, then just walk away saying, 'That's no longer my cup of tea.'" Lissitzky has appealed the ruling, refusing to turn over the settlement information. Since the falling-out, Lissitzky has alleged in the German newspaper *Süddeutsche Zeitung* that Toussaint deceived him while helping to broker the sale of El Lissitzky artworks through Cologne dealer Priska Pasquer. Toussaint contends that Lissitzky simply misunderstood the terms of the agreement. Through his lawyer, Lissitzky declined to comment.

Despite his moment of doubt, Toussaint now seems determined to continue his art recovery activities. This past winter he decided to make New York his business base, setting up an office in midtown Manhattan to coordinate the work of researchers in Washington, Berlin, Paris and London. It was a decision made in part because American courts are comfortable with contingency arrangements. New York will also stage what Toussaint predicts will be a heated few months this summer, during the much-anticipated Malevich retrospective that is on at the Guggenheim Museum through September 7 before traveling to the Menil Collection in Houston this fall. Many works in the show have complicated provenances, and Toussaint has suggested that he plans to seek restitution of some of them through litigation. "I'm not going to lay out my tactics beforehand in the press," he says, "but there's going to be a lot of fun."

FITTINGLY, TOUSSAINT'S DRAMATIC trajectory through the art world began with a screenplay. In the early 1980s he dropped out of Berlin's Freie Universität, where he was studying art history. His roommate, Thomas Kummer (who later gained fame for deft newspaper and magazine profiles of Hollywood stars, then infamy when it was discovered that he'd made up many of the interviews and anecdotes), was working on several film scripts. Toussaint followed suit, starting a script that traced the path of a missing Ernst Ludwig Kirchner painting, *Der Schmied von Hagen*. The research brought him to East Germany, where he met an aging man whose collection—hidden from Communist authorities—included pieces by Kandinsky and Klee. Toussaint hatched a plan to spirit 10 of

Mutiny on the bounty: When Lissitzky settled his claim for Kandinsky's *Improvisation No. 10*, below, with dealer Ernst Beyeler, Toussaint was cut out of the deal completely. The work's estimated value is \$30 million

101





Malevich, pictured on his death bed in 1935, never retrieved a group of works he had left in Berlin. Owned by the Stedelijk Museum in Amsterdam and now on loan in the U.S., those works may be Toussaint's next target

the works to the West and sell them. The proceeds helped the man's grandchildren escape from East Germany, Toussaint says, and they rewarded him amply (mostly, he concedes, in thanks for not having fled with the cash).

Still only 25, Toussaint had a nascent idea for a business. He bought an early laptop computer and started systematically itemizing works listed as lost in catalogues raisonnés. "I tried to combine research on the works with research from other disciplines," he says. "To find a lost object you have to reconstruct the lives of people surrounding it. I set myself a list of 10 paintings to find, and I found three or four. It was a huge thrill, because at first you only have a black-and-white photo of the piece hanging in someone's living room, and at the end you're standing before the work somewhere in South America or Switzerland."

A few families whose works he had tracked down asked him to pursue other pieces. But problems quickly arose. "If I went to the National Archives in Washington, D.C., and found nothing, I'd still have the travel expenses and the hotel cost," Toussaint recalls. "But the people didn't want to pay expenses if there was no direct result." Sometimes potential costs scared off the rightful owners from pursuing claims at all. Worse yet, clients who did hire him often selected legal representation on the basis of family connections or low fees, and because their lawyers inevitably lacked proper experience in this tricky field, tactical mistakes ensued. Frustrated, Toussaint came up with a risky new model for handling cases: He would pay all the costs involved

in the attempted recovery, including legal bills. If successful, he would receive a cut of the work's value. How big a cut? Half.

FIFTY PERCENT. From a PR standpoint, the figure is a millstone Toussaint knotted around his own neck. Coming up with a headline for the hardest-hitting piece ever published about Toussaint, the editors of the *Financial Times Deutschland* went straight for the jugular with "Der 50-Prozent-Mann." There's no question that in some cases Toussaint's recovery fee can be quite large, given the great value of some missing masterpieces. But the catch is the substantial costs involved in recovery.

In the MoMA case, Toussaint and his associates had to first track down all 31 Malevich heirs scattered across Eastern Europe and then secure authorization to represent each one. "These cases can become sinkholes for money," says Constance Lowenthal, former director of the International Foundation for Art Research in New York. "Before you even come into negotiation with the current holders of a work, you can easily spend hundreds of thousands of dollars. Often the claimants live in different countries and speak different languages. Not to mention that, over the generations, many of these families have become quite dysfunctional." But a united family front is an inescapable prerequisite for restitution, because no sane museum director or private collector would return a work for which other claimants might later pop up.

The second hurdle is detailing a work's provenance—exactly when and how it changed hands—then establishing which country's laws apply to each transaction. Complicating matters, opacity is a fundamental underpinning of the art market: Between secretive auction houses and discreet gallerists (not to mention wartime thefts), establishing a clean paper trail is arduous. "You could fairly call Toussaint a bounty hunter," says one art restitution insider who has worked with him. "But the fact is, he does a remarkable job—his research is impeccable." That's partly due to perseverance and archival research skills and partly because he unflinchingly throws money at problems. Working for the German government on cases of looting by the Soviet Army, for example, he secretly paid a team of Russian archive staffers to track down hard-to-get documents for a full year.

Even with the heirs united and a paper trail established, museums and collectors rarely just hand works over. When Toussaint first approached MoMA in 1992 about the six Malevich paintings, he was quickly shown the door. Once the museum finally decided to make an offer, it was only \$500,000, he says. In the end, it took seven years to resolve the case, with prominent New York attorney Lawrence Kaye leading the tortuous final negotiations at a steep hourly rate.

Clearly, Toussaint never actually pockets 50 percent of any restituted work's value. "Once you subtract legal fees and expenses, it's maybe 20 percent," he says. "Sure, I made a lot of money in some cases, but I risked a lot of money. I could have made almost as much investing in treasury bonds." While Toussaint is believed to be the only art restitution specialist doing all-or-nothing deals, contingency arrangements are common in the field. "Charging families an hourly rate poses challenges in the long run," explains Willi Korte, a prominent restitution specialist who focuses on Holocaust-era claims. "If you start with a \$10,000 budget, it doesn't go far—not when you have to do research in three countries on two continents."

Contingency agreements are also sometimes used by the Art Loss Register, the international database of stolen and missing art with offices in London and New York. But the firm's chairman, Julian Radcliffe, is not entirely comfortable with them. "Saying to clients, 'Pay us the contingency or you don't get the painting' feels too much like extortion or ambulance-chasing," he says. Unlike Toussaint, however, both Korte and the Art Loss Register have a model that combines a contingency fee and itemized expenses. "For me, the cleanest arrangement is a contingency plus verifiable expenses," Korte says. "I think that arrangement adds a certain amount of transparency. But I can see that in some cases you have to advance all expenses to the client. Fifty percent seems steep for doing that, yet I can't say that I see anything sinister in Clemens Toussaint's agreements."

OTHERS, HOWEVER, SEE PLENTY that's sinister in Toussaint's activities. Often, they cite the fact that Scotland Yard seized as stolen art a work that he had recovered. Thieves had taken the work, René Magritte's 1966 painting *Decalcomanie*, from the home of Brussels collector Chaim Perelman in 1979. Toussaint discovered that it had ended up with an owner in Beverly Hills. Declining to reveal the painting's whereabouts, he proposed a 50 percent fee for

"sure, I made a lot of money, but I risked a lot. I could have made almost as much in treasury bonds"

its recovery to Perelman's widow. She refused, but died soon thereafter. Noémi Perelman Mattis, the couple's daughter, then agreed to the deal, stipulating that the work be auctioned at Sotheby's London.

To get it back to Europe, Toussaint paid \$300,000 to the California owner. (Such payments are hardly uncommon in the restitution field; "good faith owners" are generally recompensed their purchase price whenever possible.) But Toussaint had fallen into a trap. Mattis—apparently feeling she was being coerced into paying his fee—had called in Scotland Yard. Because there is no statute of limitations on claims for stolen works in the U.K., the painting was seized after entering the country and later returned to Mattis. Though Toussaint was not charged with any wrongdoing, he never received his fee from Mattis. (He sued her, of course, but the details of their 2001 settlement are confidential.) "I think the Crown prosecution lost their nerve," says Charles Hill, the former head of Scotland Yard's Art Theft Squad and now a private consultant in art world security. "Toussaint had been lured into the country. The theft was in Belgium, the piece came from America and Toussaint's a German national. Scotland Yard had been nice enough to help the damsel in distress, but the criminal case was not strong."

An accusation repeatedly leveled against Toussaint is that he plays up or even fakes minor restitutions to put pressure on institutions holding major pieces. For instance, he scored a seeming victory for Jen Lissitzky in 2000, when the Kiyomizu Sannenzaka Museum in Kyoto returned Klee's 1921 painting *Deserted Square in an Exotic Town*. Responding to critics who alleged that he had, in fact, bought the piece from museum founder Masayuki Murata, Toussaint insisted he'd made merely a "symbolic" payment. Yet after Toussaint and Lissitzky's relationship ended and details of their work together started leaking out, it emerged that the sum was about \$350,000, a figure Toussaint says was still far less than what Murata paid for the work. Contacted by *Art + Auction*, Murata declined to comment.

Furthermore, Toussaint's pure contingency model opens him up to the frequent charge that he overstates the complexity of simple cases to persuade clients to sign his contingency contract and then collects his 50 percent after performing a modest amount of work. Toussaint denies he's ever done this and says he actually proposes smaller contingencies if the case seems straightforward. No client has publicly accused him of this practice, but since his efforts tend to be clouded with secrecy, it's an allegation that nonetheless continues to pop up.

Beyond the various allegations lies a grander theory: that Toussaint has secret financial backers who receive either a share of his profits or artworks for resale. Toussaint says this happened just once. In 2002 he entered into a joint-partnership with Foris, a German group specializing in litigation financing, to fund Henry Newman's claim for the Monet at the Met. (Last May, after reaching an undisclosed settlement with Newman, the museum put the work up for auction at Sotheby's, where it was bought in against a \$3.5–4.5 million estimate.) While there is nothing improper in such arrangements per se, in the thorny field of art restitution, where the claimants are

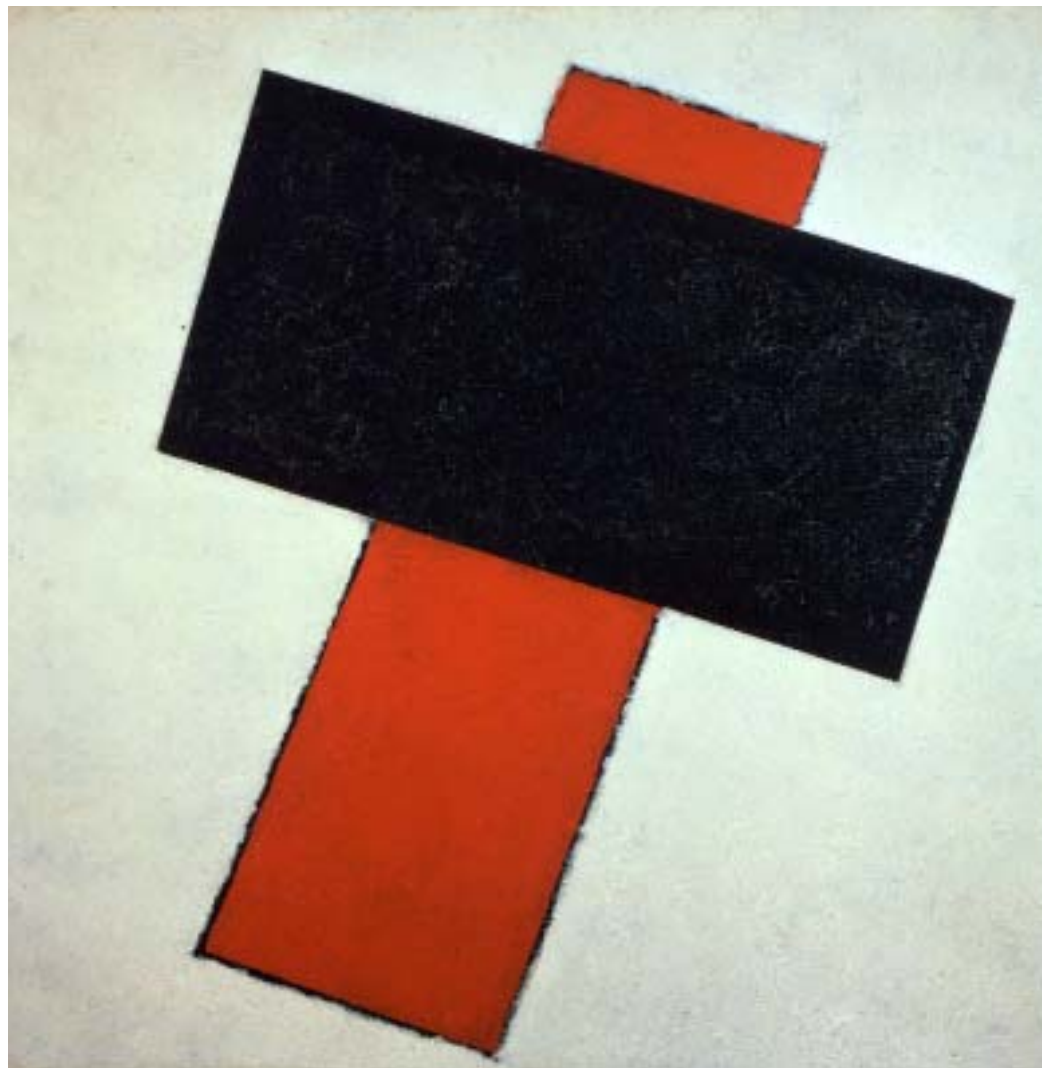
frequently families victimized by the Nazis, these deals are portrayed by some as unseemly schemes to profit from the crimes of the Holocaust.

It has also been asserted that Toussaint works with the Wildensteins, the art-dealing family based in New York and Paris. Toussaint denies that there is any formal, ongoing relationship, but he acknowledges that it was Pace Wildenstein chairman Arne Glimcher who brokered the consignment of Malevich's *Suprematist Composition* to Phillips. The former MoMA painting had been targeted by Christie's owner François Pinault for his firm's evening sale of 20th-century art. But his long-time rival, French luxury goods mogul Bernard Arnault of LVMH Moët Hennessy Louis Vuitton, had just bought Phillips Auctioneers and needed a star lot for his debut. "The real auction was between these two Frenchmen, Arnault and Pinault," says Toussaint. "They were fighting like crazy to get this painting, at increments of a million dollars a day on the guarantee." Toussaint declines to comment on whether his relationship with the Wildensteins extends beyond that one instance. "If someone has done a good job with the first sale, then why not give them other ones?" he asks coyly.

NOT SURPRISINGLY, Toussaint has a conspiracy theory of his own, in which various enemies have mounted a concerted effort to damage his reputation and dry up his business. For him, events came to a head on a gray day in February 2002, when the press club in Frankfurt, Germany, hosted one of the most bizarre book launches in history. Organized to promote the German-language edition of *36 Letters*—a sloppily produced nonfiction title printed by a small Israeli firm called Alphabet Publishers—the press conference nonetheless drew high-powered journalists from around Germany and abroad. Willi Korte and Hector Feliciano, also famous for tracking down artworks looted by the Nazis, sat at the speaker's table beside the book's Israeli author, David Markish.

Toussaint, who had not been invited and had made heated efforts to get the event canceled, figures as the principal villain in *36 Letters*. The book recounts the story of Sophie Küppers and the legal battles that have surrounded

Supreme triumph: After being recovered from MoMA, the Malevich heirs sold *Suprematist Composition* at Phillips for \$17 million—giving Toussaint his biggest payday



“at the moment, Toussaint is creating a lot of billable hours for lawyers while not getting great results”

her looted art collection, including Kandinsky's *Improvisation No. 10*. It covers extensively, but not objectively, the dispute between Jen Lissitzky and the descendants from his mother's first marriage over who has rights to claim the art today. Using occasionally hyperbolic language, Markish casts Toussaint as a man whose aim is to “plunder museums” and cheat the other Küppers heirs out of their rightful share. Practically every negative article written about Toussaint is reproduced, with nothing offered as a counterweight. In the epilogue, Markish writes, “The family conflict now has the character of a Shakespeare drama: outrage, generosity, boiling passions, and blood almost shed. But murder will out—from behind the curtain Clemens Toussaint appears.”

A few minutes after Jürgen Merschmeier (Chancellor Helmut Kohl's former spokesperson) began moderating the event, Toussaint casually walked in, slumped down in a back corner of the room and proceeded to leaf through a newspaper. When the arguing between Toussaint's critics and defenders grew particularly loud, he would look up briefly. To those who didn't recognize him, he might have appeared to be a bored limousine driver, waiting for the event to end so he could whisk his client away.

Onstage, his reputation was being pilloried. Feliciano took the hardest line, telling Toussaint, “Don't tell heirs you're trying to help them, because first of all it's not true and second of all no one believes you.” At one point Feliciano even suggested that Toussaint was destroying the family of Sophie Küppers and her descendants. Toward the end of the gathering, Toussaint rose to defend himself and justify his contingency fees. He was somewhat successful, judging by subsequent press reports on the event: While some stories emphasized the version of events in *36 Letters*, others raised doubts about the origins of the book and the press conference itself. (When Merschmeier was asked who had sponsored it, he first evaded the question and then said only, “Strategic investors.”)

Toussaint claims the event was part of the ongoing campaign against him that is being coordinated largely by three primary enemies: Ernst Beyeler, Galerie Gmurzynska and Nicolas Iljine, a German resident of Russian descent, long active in brokering cultural deals between Russia and the West, who serves as the Guggenheim's European representative. Toussaint can't prove that assertion, but all three would seem to have good reason to dislike him. In the wake of Switzerland's Jewish bank accounts scandal, Toussaint made a point of publicly emphasizing the fact that the man from whom Beyeler bought the Kandinsky and other works was none other than Ferdinand Möller,

one of four dealers appointed by the Third Reich to sell off “degenerate” art. Gmurzynska, meanwhile, had a long-running public feud with Jen Lissitzky, then Toussaint's client, over payments for El Lissitzky works that were taken out of Russia before the Iron Curtain fell. Iljine and Toussaint butted heads when both were trying to help a Russian man recover a painting stolen in 1978 from his father's St. Petersburg apartment, which had resurfaced in Switzerland.

Iljine insists that he holds no grudge against Toussaint, emphasizing that the episode involving the stolen work took place a long time ago. “Yes, I and others think the public needs to be informed about his methods and the way he works, about which we have some questions,” Iljine remarks. “I always think it's a shame when works of art are taken away from museums and land in auctions, depriving the public of seeing these paintings in the future. But for me, that's the beginning and the end of my issues with him. He, on the other hand, doesn't let things go—that's part of his modus operandi, it's how he keeps things on the boil.”

At the very least, it seems that Iljine and Galerie Gmurzynska helped promote the launch of Markish's book to some members of the press. Yet Gmurzynska director Mathias Rastorfer denies he's masterminding or underwriting opposition to Toussaint. He says simply, “We are not alone in not having a loving embrace for Toussaint. His approach is poisoning the atmosphere of the art world.” Rastorfer argues that loans and exhibitions across international borders are becoming increasingly difficult to arrange, and as a result, scholarship and appreciation of movements like the Russian avant-garde suffer.

Both Iljine and Galerie Gmurzynska have ties to what is expected to be Toussaint's next big target: the Malevich retrospective that is now at the Guggenheim in New York and first appeared at the museum's Berlin branch this past winter. Iljine originally proposed the exhibition and helped organize it. Gmurzynska, the world's leading gallery for Russian avant-garde art, lent works to the show and helped arrange loans from collectors.

As recent articles published in the international press have noted, numerous works in the exhibition have complicated histories, including six paintings that had been owned by Nikolai Khardzhiev, a Russian art historian who maintained an important collection of Russian avant-garde art after such works fell out of favor with Soviet officials. In 1993, with the help of Rastorfer and his partner, Krystyna Gmurzynska, Khardzhiev and his wife emigrated from Russia, and the gallery advanced them \$2.5 million in exchange for six Malevich paintings. Although questions have since been raised about the fairness of the deal between Khardzhiev and Galerie Gmurzynska, Rastorfer insists that Khardzhiev approached the gallery, set the price for the works

Toussaint is suing his former client Lissitzky (both pictured opposite, in happier times). It's not the first setback Toussaint has faced: He nearly went broke after a deal to return Magritte's 1966 *Decalcomanie*, below, to its owner was foiled by Scotland Yard





and handled their exportation himself. Toussaint says that there's some ambiguity as to how the paintings came into Khardzhiev's possession, but for now at least, the Malevich heirs lay no claim to them.

What interests Toussaint more is a group of Malevich works coming from the Stedelijk Museum in Amsterdam that have followed a contorted path. The artist left the works in Berlin after a triumphant 1927 show. Fully intending to return to Germany, he entrusted the works to architect Hugo Häring for safekeeping. But Malevich wound up trapped in the Soviet Union and died there from tuberculosis in 1935. The Stedelijk made repeated offers to buy the works from Häring, but for two decades he refused. Then, in 1958, just after Germany's 30-year statute of limitations on ownership claims expired, Häring reversed his position and sold 79 of the Maleviches to the museum for DM120,000 (\$29,000 at 1958 exchange rates).

In a 2000 interview, Rudi Fuchs, the Stedelijk's director at the time, stated, "We maintain, and will continue to maintain, that the museum acquired these works in the proper way." (Fuchs, who resigned from the museum at the end of last year, declined to comment when contacted by *Art + Auction*.) Fuchs has quite accurately pointed out that the Stedelijk has done much over the years to further the appreciation and understanding of Malevich's work, and thus, it could be argued, has repaid its debt to the artist's legacy.

Referring to the Stedelijk's past refusal to deal with the Malevich heirs, Toussaint remarks, "The descendants were told to go to hell in Holland, but we'll have to see what happens in New York." Indeed, the decision by numerous museums to retribute works to claimants in recent years—and the festering case in which the Manhattan district attorney seized two Egon Schiele works loaned by Vienna's Leopold Museum—gave the Stedelijk cause for concern.

For a time, it wasn't certain the Stedelijk's Maleviches would be sent to New York. Stedelijk spokesperson Jelle Bouwhuis insisted last year that the works would not make the trip unless the museum received "absolute juridical guarantee for their safety

from seizure." In March, after much paperwork, the necessary guarantees were obtained from the U.S. State Department. But Toussaint maintains that this only protects the works from seizure by the federal government, not seizure in civil claims. Stopping short of declaring his intention to file a suit for the works, he says, "We like the fact that the exhibition brought the paintings into a more favorable jurisdiction."

Whether or not Toussaint has the ammunition to mount a successful legal claim for the Stedelijk works remains a question, but theoretically at least, a good deal of money could be at stake. And, as Toussaint knows, there are people out there who would like to hijack his most important clients. Last December, 11 Malevich heirs living in Poland received an anonymous letter questioning whether Toussaint was ethically and financially fit to represent them. The letter was followed by a visit to the heirs from a man offering to take them to the VIP opening of the Malevich exhibition at the Guggenheim Berlin in January. On the bus, the man promised, there would be lawyers ready to discuss their restitution cases.

It would take the defection of just a single one of the 31 heirs to send Toussaint's entire Malevich project up in smoke. So within hours of learning about the visitor, Toussaint was on a plane to Poland. To show up the would-be rivals for his clients, he chartered his own bus to Berlin for the opening and brought several of the heirs. They arrived in dramatic fashion, without invitations, but with the Polish cultural attaché in Berlin, Jan Rydel, at their side.

The campaign for Toussaint's clients continued, however. In late April, as Sotheby's sale of *Suprematist Painting, Rectangle and Circle*, approached, the same descendants received another letter, suggesting they should part ways with Toussaint, withdraw the work from the auction house and sell it instead through "a reputable professional gallery." It didn't work. "There is a clear attempt being made to take over representation of the heirs, in the same way that Jen Lissitzky had been split away from me," Toussaint says. "I won this round, but in the future a lot of things can happen."

WHEN TOUSSAINT BEGAN searching for stolen artworks in 1986, art restitution did not exist as a field. There was far less consciousness among collectors, museums, auction houses and dealers of the looting that took place during World War II. As Toussaint notes, "Even 10 years ago, people were still stunned that someone was suing a museum or a government to get back a piece of art." Today, of course, his activities—if not his precise methods—are a familiar part of the art world landscape.

Tragedy is implicit in virtually every war-era looting claim, as most are legacies of Nazi repression and the Holocaust. This affixes a moral complexity to these cases that simply doesn't exist for other cases of art theft. How is justice to be truly served, and at what cost? Most of the original victims are no longer alive, and their heirs often don't have the means or the will to pursue expensive and time-consuming restitution claims. Toussaint takes care of that: He investigates, negotiates, bullies, sues and generally makes things uncomfortable for the current owner. When he succeeds, he wins big.

It's dirty work, and no one is doing it for free. While some see only a profit motive, Toussaint will tell you it's about more than just money. An ambitious man, he burns to leave his mark on the world. "Now, no museum buys an artwork without verifying the provenance," he says. "If I helped create some of this sensibility, that's more important to me than whether I can buy a Ferrari."

Nonetheless, Willi Korte, who works much more cautiously (and quietly), wonders whether money has skewed Toussaint's practice. "I think that the MoMA case changed Toussaint," he says. "He got lucky by having such a clear mistake on the part of such a rich institution and having all the Malevich heirs united. With that new money, he could afford to turn to law firms when he reaches the point where his research skills end. But such cases are rare. At the moment, he is creating a lot of billable hours for lawyers while not getting so many great results."

There's no doubt Toussaint has had a significant impact on the field of art restitution, but the future of his business hangs in the balance. He needs major victories to fund his all-or-nothing tactics, and after the disappointing result at Sotheby's, the financial pressure on him (not to mention the pressure from his displeased clients) can only be more intense. Toussaint's tenacity has taken him far. In past predicaments, he's always conjured up another high-stakes run. But sometimes a gambler's greatest skill is knowing when to walk away.

MARC SPIEGLER IS A CONTRIBUTING EDITOR OF *ART + AUCTION* BASED IN ZÜRICH