

## Litigator of the Week: A Win in the Steinbeck Feud

By **Ben Hancock**

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You might call it a literary success.

Susan Kohlmann, managing partner of Jenner & Block's New York office, secured a shutout win for the stepdaughter of John Steinbeck in the latest installment of a long-running legal feud over book rights that has divided the late author's progeny.

The \$13.15 million verdict delivered last week by a Los Angeles federal jury, on one hand, seems unlikely to mark the end of the battle. But for Kohlmann and her client, Waverly Scott Kaffaga, it closes a critical chapter and brings moviegoers closer to seeing Steinbeck's literature come to life on screen.

The case has a long and knotted history. It dates back to a 1983 contract between Steinbeck's third wife, Elaine, and his sons from a previous marriage, John IV and Thomas. Each of them received a third of the royalties from Steinbeck's books under the deal, but Elaine was given sole control over the rights.

When she died in 2003, it touched off what would end up being a seven-year legal contest that delved into the nuances of copyright law. It centered on whether John IV's daughter and Thomas and his family had the rights to terminate the



Courtesy photo

**Jenner & Block partner Susan Kohlmann.**

agreement and wrest back control of Steinbeck's works. The case ultimately went in favor of Elaine's estate, which was inherited by Kaffaga, but not before going to the Second Circuit Court of Appeals—twice.

Things didn't end there, though. In 2014, Kaffaga filed suit, alleging that Thomas Steinbeck and his wife Gail Knight Steinbeck were undeterred by those court decisions and had started trying to get a cut of deals for film adaptations of two of the author's best-known works, "East of Eden" and "The Grapes of Wrath." The legal uncertainty

they caused ultimately led Universal Studios to scrap plans to produce “East of Eden”—which at one point was set to star Jennifer Lawrence (of “Hunger Games” fame) —Kaffaga alleged.

Last year, Kohlmann won a summary judgment motion on claims that Thomas and Gail had breached the 1983 agreement and made it unclear to movie studios who actually controlled Steinbeck’s work, a legal concept known as “slander of title.” At trial, Kohlmann was faced with having to secure damages for those claims, in addition to proving a separate claim for “tortious interference” by Steinbeck’s other heirs.

Boiling down the complicated case history was one key component of securing the verdict, which included \$5.2 million in compensatory damages and \$7.9 million in punitive damages, Kohlmann said. It’s something she was undoubtedly able to do more easily because she’s been involved in the litigation from the beginning.

But Kohlmann also said she was able to use email evidence, as well as live testimony from Gail and video depositions from Thomas—who died in 2016—to make the point that the couple were bent on asserting control over the works even in the face of adverse legal decisions. The Steinbecks were represented by the Matthew Berger Law Group; Stroock and Stroock and Lavan and

entertainment law firm Freundlich Law withdrew as counsel earlier in the case.

In a statement to The New York Times, Gail Steinbeck said she planned to file an appeal in the U.S. Court of Appeals for the Ninth Circuit: “On behalf of my late husband Thom, we are deeply disappointed in the jury’s decision. The U.S. Copyright Office states very clearly that we own a portion of the rights to the Steinbeck works.”

Kohlmann said that Kaffaga, who is now 82, hopes that with the verdict, the movie deal for “Grapes of Wrath”—which is set to be directed by Steven Spielberg—can move ahead, bringing the story to screens (and maybe enticing watchers to read the book, too).

“She has tried really hard to live up to the responsibility to bring the works of John Steinbeck to life in movies and TV and has been stymied all along the way,” Kohlmann said. She added: “I think with all the wins we’ve had in the Second Circuit, and with this case, and with a resounding jury verdict, you would hope it would be time to stop.”

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