

Media & Entertainment Group Of The Year: Jenner & Block

By Kelly Knaub

Law360, New York (January 30, 2018, 3:32 PM EST) -- Jenner & Block LLP in the past year obtained a \$13.15 million jury verdict for John Steinbeck's stepdaughter in a case over rights to the late author's works and secured reversal of a ruling that would have let certain websites stream Fox Television Station's copyrighted programming, landing among Law360's Media & Entertainment Practice Groups of the Year.

The group's content, media and entertainment group represented the estate of Steinbeck's late wife, Elaine Anderson Steinbeck, and her daughter Waverly Scott Kaffaga in a suit she brought against Gail Knight Steinbeck, the widow of the famous writer's late son, Thomas Steinbeck, accusing her of lying about her stake in his father's works to interfere with movie deals for "The Grapes of Wrath" and "East of Eden."

In addition to handing Kaffaga \$5.25 million in compensatory damages in September, the California federal jury hit Gail Steinbeck and her company The Palladin Group Inc. with \$7.9 million in punitive damages after finding that she wrongfully interfered with Kaffaga's attempts to broker deals to bring the late author's works to the screen and also for driving down the value of the Steinbeck catalog.

Susan Kohlmann, managing partner of the firm's New York office, told Law360 that one of the challenges of the case was providing the jury with the necessary legal and historical background of the issues in the case "in a cohesive, understandable way" in light of the parties' long history of litigation.

"Our team's strategy was to make sure we told the jury a cohesive story that they could follow as we put on our case, and then was echoed in the cross examination of defendants' witnesses," Kohlmann said.

Andrew Bart, who chairs the practice, told Law360 that the case is "very important in terms of the laws that relate to termination rights in the copyright area and in terms of the actual exploitation of the Steinbeck works."

The group scored another win this year when the Ninth Circuit in November affirmed the dismissal of a related copyright suit filed by the estate of Thomas Steinbeck against the estate of Elaine Steinbeck, which it represented.



Earlier last year, in March, the group scored a win when the Ninth Circuit sided with Fox Television Stations and other broadcast networks in ruling that internet streaming websites including Aereo, FilmOn X and others cannot stream copyrighted material under the same license used by the networks.

One challenge the group came up against, according to partners Julie Shepard and Richard Stone, was the Second Circuit's 2008 Cablevision decision, which held that a remote-storage digital video recorder system does not infringe the public performance right.

"Just months before we filed for a preliminary injunction against Aereo, a district court in the Aereo case in the Southern District of New York denied a motion for a preliminary injunction against a virtually identical Internet-based service because of the Cablevision precedent," Shepard said.

But despite the challenge, the group convinced the appeals court that the decision was not the controlling authority.

"We overcame Cablevision by arguing that it was not binding in the Ninth Circuit and proceeding to deconstruct its flawed reasoning and showing why it should not be adopted more broadly because internet retransmission services clearly perform publicly under the Transmit Clause, which Cablevision had misapplied," Stone said.

Yet another "profoundly important" case, according to Bart, is a proceeding in which the firm represented SoundExchange before the Copyright Royalty Judges to determine the royalty rates that Sirius XM Radio Inc.'s satellite radio service, Satellite Digital Audio Radio Services, must pay artists and record companies for digitally transmitting their sound recordings.

A month-long trial was held last spring, and the judges issued a decision in December approving a 40 percent rate hike for Sirius, which began Jan. 1 and runs through 2022. Sirius will now shell out 15.5 percent of its gross revenues to royalty payments, according to the firm.

The firm's media group has about 22 partners and between 10 and 15 associates based out of New York, Los Angeles, and Washington, Bart said, noting that there's some "fuzziness" in numbers since associates at the firm don't declare a major until their fifth year and there are a lot of associates who do a lot of work for the practice. He added that the group would like to expand in the transactional space.

As for what makes the group stand out from other firms' media and entertainment practices, Bart said it continues to be its depth and breadth.

"We have so many people across the platform who are playing first chair roles in significant matters," Bart said. "I still think it's the primary differentiation between us and other firms."

--Additional reporting by Daniel Siegal, Bonnie Eslinger, Bill Donahue and Ryan Davis. Editing by Emily Kokoll.