

ALB CHINA 2020 TOP 15 LITIGATORS

ALB CHINA 2020 十五佳诉讼律师

China's commercial litigation business has experienced vigorous growth in recent years; and meanwhile Chinese commercial litigation lawyers have enhanced their overall professional competence and global competitiveness through profound accumulation of knowledge and solid experiences.

近些年，中国商事诉讼业务蓬勃增长，中国商事诉讼律师们在整体专业水准与全球竞争力上也开始厚积薄发。

BY KRISTEN LIU 作者：刘诗宇

LAWYER 律师

Law Firm 所属律所

Winners are listed in alphabetical order.

获奖名单按律所名称首字母排序

CAO FANG 曹放

AllBright Law Offices 锦天城律师事务所

CHEN FU 陈浮

Commerce & Finance Law Offices 通商律师事务所

CHEN XIANGYONG 陈向勇

Wang Jing & Co 敬海律师事务所

GUAN BING 管冰

East & Concord Partners 天达共和律师事务所

LIU HAIPING 刘海屏

Beijing Dentons Law Offices, LLP 北京大成律师事务所

LIU HONGHUAN 刘虹环

FenXun Partners 奋迅律师事务所

LLOYD LYU 吕毅

Guantao Law Firm 观韬中茂律师事务所

SHI WEIGANG 施伟钢

JunZeJun Law Offices 君泽君律师事务所

SUN WEI 孙巍

Zhong Lun Law Firm 中伦律师事务所

WANG JUNQI 王军旗

DeHeng Law Offices 德恒律师事务所

WANG ZHAO 王钊

JunHe LLP 君合律师事务所

XIE PENG 谢鹏

Jingtian & Gongcheng 竞天公诚律师事务所

XU YU 徐羽

Hylands Law Firm 浩天信和律师事务所

YUN ZHI 云治

King & Wood Mallesons 金杜律师事务所

ZHOU JINQUAN 周金全

Jincheng Tongda & Neal Law Firm 金诚同达律师事务所

For outstanding litigators, making compelling arguments based on clear facts is their job. The People's Court Daily selected the top ten commercial cases in 2019, which, in comparison with the previous year, involved more industries, larger amounts and more complicated situations, indicating that China's commercial disputes sector poses higher requirements and more severe challenges to litigators.

But we are excited to see that many applicants for ALB China 2020 Top 15 Litigators won favorable results for their clients by virtue of their solid legal skills, proficient industry knowledge, excellent logical reasoning skills, accurate interpretation of cases and highly professional attitude. These qualities enable them to stand out and win cases for clients even in unfavorable conditions. These lawyers are both legal experts and industry experts with the craftsmanship spirit. They have comprehensive understanding of the laws and regulations and their legislative intents, pay close attention to the industry's cutting-edge trends, and constantly update and expand their "knowledge base". We have now selected the winners of ALB China Top 15 Litigators this year.

OVERVIEW

Most of the winners on the list this year have about 20 years of working experience in the field of dispute resolution, practicing in the areas of maritime, foreign dispute resolution, international trade, energy and offshore engineering, insurance finance, intellectual property, private funds, and venture capital. They not only provide clients with high-quality legal services, but also play an important role in promoting the development of China's commercial dispute resolution industry and accelerating the process of rule of law in China.

In addition to serving as lawyers, many of them have experiences of working at procuratorates, courts, or arbitration organizations, or serving as general counsels, which enable them to think from multiple perspectives when handling cases, have more accurate and comprehensive

METHODOLOGY

For this year's list of ALB China Top 15 Litigators, the selection committee conducted detailed analysis and evaluation of the candidates' litigation work in 2019 primarily by assessing the following two aspects and relying on third-party recognition:

1. Typical cases provided by lawyers that showcase their achievements in 2019; and
2. Cases which lawyers participated in and for which judgments were pronounced in 2018, the information of which is available through public channels. The criteria for assessing objective information in these two aspects include, among others:
 - a. Difficulty of cases
 - b. Litigation strategies employed by lawyers
 - c. Influence of cases
 - d. Innovative nature of cases

评选方法:

在本次的ALB China十五佳诉讼律师的评选中, 评委会主要参考以下两个方面的内容, 并引入第三方的认可情况, 对报名者在2019的诉讼成就进行了详细的解析、评价:

1. 律师提供的可代表其2019年工作成就的典型案件;
2. 公开渠道可获取的该律师参与的裁判案例。该两方面客观信息内容的评选标准包含但不限于以下几个方面:
 - a. 案件难易程度
 - b. 律师诉讼策略
 - c. 案件影响力
 - d. 创新性

understanding of the cases and serve clients better in dispute resolution. They are also actively engaged in academia: Chen Fu, a partner at Commerce & Finance Law Offices, serves as a tutor of the Law School of Beijing Jiaotong University and an off-campus tutor

站在事实的肩膀上雄辩是诉讼律师们的战斗日常, 而“事实的肩膀”能有多高, 则考验着诉讼律师们对案件诸多细节精准的把握能力。在过去的一年中, 《人民法院报》编辑部评选出了2019年度人民法院十大商事案件, 与往年相比, 涉及行业更广、金额更大, 且案情更加复杂, 预示着中国商事争议解决行业对诉讼律师的要求越来越高、挑战愈加严峻。但令人欣喜的是, 在ALB收到的2020年ALB China十五佳诉讼律师申报表格中, 我们看到一位又一位诉讼律师凭借扎实的法律基本功、丰富的行业知识、严密的逻辑思考、细节化的案情解读和高度专业的态度赢得了有利于客户的诉讼结果, 多次在原本不利的情况下力挽狂澜, 反败为胜。这些律师既是法律专家, 又是行业能手, 充分理解法律法规及其立法意图的同时紧密关注着行业前沿动态, 秉承着深耕细作、精益求精的匠人精神, 不断更新和扩充自身的“知识库”, 走在行业最前端。我们在这些杰出的诉讼律师中评选出了2020年ALB China十五佳诉讼律师。

概况

今年上榜的15位诉讼律师们大多具有20年左右的从业经历, 其争议解决领域包括海事海商、涉外争议解决、国际贸易、能源及离岸工程、保险金融、知识产权、私募基金、风险投资等。他们丰富的经验不仅使他们在多元化的争议解决领域中游刃有余, 为客户提供优质法律服务, 还让他们成为中国商事争议解决行业发展的推动者, 加快了中国的法治建设进程。除了担任律师, 他们中还有很多人具有检察院/法院、仲裁组织和法务的工作经验, 这使得他们在参与案件的过程中能够站在多角度进行思考, 对案情矛盾点的把握更加准确和全面, 有效抓住并利用更多细节, 为客户更好地解决争议和纠纷。同时, 这些杰出的诉讼律师们还积极地投身学术, 例如, 北京市通商律师事务所的陈浮律师担任北京交通大学法学院联合导师和对外经济贸易大学硕士生校外导师; 观韬中茂律师事务所的吕毅律师曾担任华东政法大学硕士生指导教师和同济大学公共管理硕士(专业学位)校外导师; 德恒上海律师事务所的王军旗律师担

“We usually work in teams according to division of responsibilities and give full play to the capabilities of different lawyers, thereby accomplishing the task at an expedited pace.”

“我们通常是团队作战，按照已经比较成熟的工作机制分工合作，充分发挥多位律师的聪明才智、能力与经验，一鼓作气完成任务。”

— Chen Fu, Commerce & Finance Law Offices 陈浮, 通商律师事务所

for master's degree students of the University of International Business and Economics; Lloyd Lyu, a partner at Guantao Law Firm, once served as a master's degree tutor of East China University of Political Science and Law and an off-campus tutor of master's degree program of public administration of Tongji University; and Wang Junqi, a partner at DeHeng Law Offices, serves as a master's degree tutor at Fudan University. By doing so, they train the new-generation litigators by virtue of their rich practice experience and academic accomplishments. Additionally, the winners also actively participate in charitable activities. These outstanding lawyers not only demonstrate excellence in their work but also show great commitments to the social development. We want to congratulate them for their great achievements over the last year and praise them for their strong sense of social responsibilities.

We interviewed some of the lawyers on the list this year to find out the key to their success, and to hear their understanding of the legal profession, their advice to enterprises and their outlook on the industry.

PROFESSIONAL PHILOSOPHY

Wang Zhao, a partner at JunHe, believes that the most important quality for litigators is “remaining calm in all circumstances and not always being competitive and feisty.” Litigation involves many confrontations, but its ultimate goal is to resolve disputes and meanwhile to maximize the legitimate benefits for clients. The core of litigation is

protecting and maximizing the interests of clients rather than competing with the opponents. Wang Zhao's professional philosophy is “to be a professional and speak professionally.” Legal professionals must respect the laws and rules when practicing law, and should always stay in control of the case, make arguments based on logic and give advice based on facts, Wang Zhao says.

Xu Yu, a partner at Hylands Law Firm, says that litigators must have a clear position and viewpoint, be proficient in a certain field, have excellent social skills and be eloquent, and have very good common sense. Xu's professional philosophy is “the ultimate goal of litigation is to convince the judge.”

“In legal proceedings, it's essential for lawyers to convince the judge to support their claims to the greatest extent,” he says. “Plaintiffs bring charges against defendants and try to demonstrate the legality of their charges, and defendants try to deny the charges or the legality of the charge. Our job is to help our clients go through the numerous facts to find grounds supporting their claims, and then convince the judge.”

WISER WAYS

When it comes to “big challenges facing litigators,” Xie Peng, a partner at Jingtian & Gongcheng, says that since the clients are from various industries and backgrounds, litigators are exposed to all aspects of society and industries, the development and evolution of which keep bringing new types of legal disputes, but some of those disputes are

任复旦大学法律硕士实务导师。他们凭借自身的丰富执业经验和学术造诣，悉心培养着新一代的诉讼律师。在法律援助等慈善活动方面，今年获奖的诉讼律师们也成果斐然，充分体现了杰出优秀的诉讼律师们专业素养与人文关怀兼具，在职业的舞台上发光，在社会的角落里发热。旁人眼中是针尖之舞般的难题，在这些杰出的诉讼律师应对起来却游刃有余。我们惊叹于他们在法庭上逆转不利局势的凯旋之姿，也好奇他们成功背后的制胜关键。我们采访了部分上榜律师，聆听他们分享对职业的理解、对企业的建议和对行业的展望。

职业哲学

君合律师事务所王钊律师认为，对诉讼律师来说，最重要的品质和精神是“心态平和、不争强好胜”。诉讼尽管是一个对抗性很强的业务，但诉讼最终的目的是要解决争议，为客户争取最大程度的合法利益，所以，诉讼律师的工作核心也应当围绕着这样的目的，维护和争取客户的利益，而不是非要和对手一争胜负、分出高低上下。王钊律师的职业哲学是“作专业的人，说专业的话”。他认为作为法律人，在执业中要敬畏法律和规则，要言之有理、言之有据；针对非自己专业领域问题，要么去请教专业的人，要么去学习和研究该专业问题，而不是凭感觉或者直觉去提供专业意见。

浩天信和律师事务所徐羽律师表示，作为诉讼律师，首先要具有鲜明的立场和观点；其次要具有在某个领域非常专业的知识水平；第三要具有非凡的社交与表达能力；最后要具有一定广度和深度的常识

通商律師事務所
COMMERCE & FINANCE LAW OFFICES

实践的巨人、 学术的匠心

——专访十五佳诉讼律师上榜律师陈浮



陈浮

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北京市通商律师事务所管理合伙人陈浮律师是一名实战经验与学术成果并济的资深争议解决律师，擅长商事诉讼与仲裁、公司、合同、金融、私募投资、企业清算与不良资产处置、知识产权保护、刑事辩护（经济犯罪领域）等方面的法律业务。从业17年来，陈律师已处理诉讼、仲裁案件及非诉项目超过七百件，其中包含多个争议金额大、法律关系复杂、社会影响大的案件。陈律师还担任北京交通大学法学院联合导师和对外经济贸易大学硕士生校外导师等职务，并已出版两本学术著作。

职业愿景与价值观

在陈律师看来，无论是个体还是组织，都应该有明确的愿景和价值观，指引其前进的方向。对于陈律师及其团队来说，其职业愿景就是要成为国内超一流的商事争议解决律师团队，不仅精通法律，还真正理解商业，能为客户解决实际问题；通过自己的勤奋、努力赢得体面的生活；在个案中全力维护委托人的合法权益，推动和追求整个社会的公平正义。为了实现这一愿景，陈律师和他的团队树立了“专业、进取、包容、分享、担当”的价值观，对此他解释道：第一，专业是律师执业的基石与根本；第二，律师是一个活到老学到老的职业，只有保持进取精神不断学习才能立于不败；第三，由于经常处于矛盾和纠纷之中，因此面对多元化的利益诉求、文化和价值观，律师为人处世必须包容豁达；第四，律师不可以自私自利，应该懂得分享和谦让；第五，律师除了责任心之外，还要有担当，为维护当事人的合法权益、法律的正确实施和社会公平正义，敢说真话不退缩。

法律服务的三个关键词

陈律师认为给客户提供全面高质量的法律服务，不仅体现在给客户理想的案件结果，同时也要注意客户的感受。“专业”、“效率”和“客户体验”是确保法律服务质量的三个关键词。陈律师解读道：“首先，我们从律师理念、思维、知识、技能、经验、服务方式、办案工具等多方面不断提高专业化水平，最大限度满足乃至超越客户的法律服务需求，在法律框架内争取客户利益的最大化。其次，我们特别注重办理案件的效率：我们有一整套成熟的工作机制、工作流程，一旦接受客户委托代理案件，相当于这根‘发条’就上紧了，不断推动案件往前走。第三就是注重客户体验。我们对每个案件都追求不仅结果要美，办案过程也要让客户舒服。我相信，上面这三点律师如果全做到了，给客户提供法律服务的必然是全面和高质量的。”

案例与心得

近十年来，陈律师已经办理了多个重大复杂的股权投资纠纷案件，也作为仲裁员审理了多个这种类型的案件，其中一些案件引起了社会的广泛关注，案件所创设的裁判规则可以说是开创性的。这类案件往往标的额大，交易结构复杂，法律适用标准不一。处理这类案件，不仅要具备过硬的法律技能和经验，还要有丰富的投融资方面的经验和知识。以陈律师及其团队去年所参与的终审胜诉的建银文化公司与金某案为例，这是一个基于股权回购债务衍生的夫妻共债案，作为案件基础事实的投资交易结构很复杂，涉及拆除VIE架构、清退境外美元基金、拆除红筹架构回归A股等，给判断原始股东回购责任、是否夫妻

共同经营等增加了很大难度，要求律师必须掌握境内外融资及上市领域的专业知识。此外，该案审理期间最高人民法院颁布了一个新司法解释，改变了举证责任归属，陈律师及其团队迅速反应，准确把握司法解释的立法目的和内在逻辑，完善诉讼主张和证据，扭转了不利局面。

学术成就

除了拥有多年的实务经验，陈律师还担任多个高校的导师职务，并且取得了丰富的学术成果。对此，陈律师说道：“律师工作注重务实，但不能总是低头走路，也要总结实践中的经验教训、心得体会，升华为实践智慧和理论用于指导实践。基于这种认识，我习惯了在办案之余勤总结，多思考，笔耕不辍。”陈律师目前已经出版两本书籍：《律师办理民商事诉讼案件操作指引》和《律师执业基本技能-民事诉讼业务篇》，后者已作为全国律协培训实习律师统一教材使用。

未来展望

陈律师认为，科学技术的发展在不断改变人类的生产方式，争议解决业务也同样在发生变化，例如，计算机技术和大数据的发展使裁判规则越来越透明，电子数据证据逐渐成为诉讼或仲裁中主要的证据类型，这就要求律师在熟练掌握法律技能的同时还要学会利用科技手段。此外，随着全球一体化的发展和我国“一带一路”战略的实施，不论是经济活动还是人与人之间的关系都会更多地受到多个法域法律制度的调整，进而使争议解决业务中的涉外因素越来越多，未来会有更多的涉外、跨境争议解决业务产生，对律师而言既是机遇也是挑战。

not clearly defined or stipulated due to “law lag.” It poses a big challenge to litigators when faced with disputes of new types, for which the existing laws only have rather vague provisions, Xie says.

When dealing with problems like this, Xie says that on one hand, they analyze the background and causes of the dispute in order to grasp the substantial legal issues involved, find out the judicial spirit of the precedent, and then explain the views in combination with academic interpretations; on the other hand, they keep expanding their knowledge of different industries and fields, and keep abreast of hotspots in the society, thus improving the capability to resolve new types of disputes.

Xie shares with us a case he and his team worked regarding a dispute between a famous state-owned central enterprise auto parts company and a national federation of industry and commerce about the name of auto parts exhibition. The core of the dispute was the ownership of the right to use the name of the exhibition, which had been held for more than ten years, and the resulting infringement loss compensation. Since the subjects involved in the case have great influence in the industry, and the exhibition could generate tens of millions of yuan in revenue every year, the court was very cautious about the trial. However, the name of the exhibition was not a trademark or a shop name, nor was it a patent or copyright. It did not belong to the object of the trademark law or patent law. Therefore, whether such a name was exclusive or not, and if so, what law should be applied, were the core issues that troubled the court, causing the difficulty in advancing the case. Xie and his team, after a lot of research on law, judicial interpretation and similar cases, proposed to the court that based on the evidence, it could be seen that this exhibition had gained popularity because its long history and great economic value. As an exclusive right similar to a trademark, it should be protected. In terms of the application of law, since the case could be understood as an improper competition and infringement in essence, the anti-unfair

competition law could be applied to the trial. These views were adopted by the court, and the case proceeded smoothly.

Chen of Commerce & Finance Law Offices pointed out another big challenge: to have thorough understanding of the case and develop a practical litigation strategy within the shortest time frame. “We usually work in teams according to division of responsibilities and give full play to the capabilities of different lawyers, thereby accomplishing the task at an expedited pace,” Chen says.

Chen and his team represented a CCB cultural company in a joint debt case which was based on equity buyback debt. The structure of the investment transaction in the case was very complicated, involving VIE structure, overseas USD funds, and removal of the red-chip structure to return to A shares; and the legal relationships in the case were also complex, which included the expansion of arbitration clauses and the determination of shareholder repurchase responsibility, debt inheritance, identification of joint debt, and distribution of burden of proof between the creditor and debtor.

After accepting the entrustment, a team composed of partners and attorneys was quickly established within a short time, gathering elites in various fields including domestic and foreign financing and listing, and marriage and family affairs. The team responded quickly, straightened out the facts, found evidence, looked up the laws, prepared plans, made demonstrations, and worked out litigation strategies. Their claim was finally upheld by the court.

In Wang Zhao’s opinion, the professional challenge is how to turn the situation around in an unfavorable condition, so as to protect the legitimate rights and interests of the client. “Under these circumstances, we should not give up easily, instead, we should seek opportunities to protect our clients through in-depth study of laws and further exploration of the details of the facts,” Wang Zhao says. He then shared with us the first vertical monopoly civil

储备。执业以来，徐羽律师一直奉行“诉讼的最终目的就是说服法官”的职业哲学。他解释道：“律师代理一个案件，其实最终的目的就是说服法官在最大程度上支持己方主张。因此，说服法官的能力可以说是律师的核心能力。说服法官的基本条件就是要理解一场诉讼，我认为诉讼的本质就是：原告从万千的已经发生过的事情中，讲出一个法律故事，提出他的要求，再论证这个故事是否真实存在，要求是否符合法律的规定，而被告则是极力否认这个故事或者否认其要求的合法性。而作为律师，就是要协助当事人从无数的事实中，找到相应的依据，争取让法官信服自己的观点。”

挑战虽多且艰，智慧更胜一筹

聊起“对于诉讼律师来说通常会遇到的挑战”这一话题时，竞天公诚律师事务所谢鹏律师说到，诉讼律师因为业务的特点，会接触到社会不同领域、不同行业的方方面面。随着社会的不断发展和进步，会不断出现新型的法律争议，而法律法规由于其滞后性，有时无法及时地加以明确规定。因此，出现较为超前且对律师来说比较陌生的争议问题，而现行法律法规又对此存在模糊点，是诉讼律师可能遇到的一大挑战。但即使是这样的难题，谢鹏律师也把握了相应的对策：一方面，围绕案情背后的争议焦点，分析争议产生的背景和原因，把握案件所涉法律问题的实质，寻找和挖掘判例所体现出的司法精神，结合学理解释对观点进行阐释；另一方面，在平时的工作中积累并学习各行业、各领域的专业知识，及时把握社会的热点、难点、痛点，着重提升解决区别于传统纠纷的新型争议的能力。拿谢鹏律师及其团队处理过的一个某知名国有央企下属汽配公司与某行业全国性工商联会关于汽车配件展会名称的争议案件，当时争议的核心是一个已举办十余年的汽配展会名称使用权归属及由此产生的侵权损失赔偿问题，由于案涉主体都在业内具有较大影响力，且该展会每年可产生数千万元的收益，故法院对于本案的审理十分慎重，但展会的名称并不是商标、字号，亦不是某种专利、版权，不属于《商标法》、《专利法》这些法规规范的对象，因此这



观韬中茂律师事务所
Guantao Law Firm

具有战略眼光的“攻城略地”诉讼律师 ——专访观韬中茂律师事务所合伙人吕毅律师

A litigation lawyer with strategic vision — a conversation with Lloyd Lyu, partner of Guantao Law Firm



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ALB：诉讼律师和非诉律师有何区别？诉讼律师要具备哪些品质和技能？

吕毅：非诉律师是尽可能预防风险发生，就像是守城的军队。但诉讼律师要攻城略地，像将军打仗般制定正确的战略战术。两者有巨大区别。

很多五百强公司法总具备非诉和合规领域经验，但管理重大仲裁和诉讼案件往往是他们的痛点。我们处理过的许多案例，标的额都在数亿元，相当于上市公司几年的净利润。接手案件后，诉讼律师应首先了解案件所涉及的公司核心商业利益点，这是最关键的能力。举例来说，2019年我们曾代理上药控股公司处理和某杭州医药公司间1.23亿元的合同纠纷，该注册资金为5000万元的公司后来估值已达15亿，因此不可能将价值30元的股份以每股1元的价格出售给上药控股，正是通过解释背后的商业逻辑，我们说服法官判定两家公司不存在关联关系。

我本人同时担任民营企业组织正和岛的上海执行秘书长，并多年担任各类企业法律顾问，正是基于此，对各类企业的商业逻辑、盈利模式等具备着深刻理解。

ALB：法总该如何挑选诉讼律师？

吕毅：除上面所提到的对商业利益点的把握外，法总应首先考察诉讼律师的法律能力。诉讼律师应能基于现有证据情况，制定正确战略战术。第一，应根据证据重量，在民事、刑事、行政途径中进行恰当选择；第二，应能够使用证据支撑选定的法律关系，同时提供一套清晰的书面文件。我们曾代理一起商业秘密侵权案，原告多位高管在离职后另设公司生产同样的汽车零部件，并以1/2价格出售给公司原有客户，如果不起诉，未来可能出现高管继续窃取公司商业秘密的行为，公司将面临倒闭。但由于部件上没有标识，几乎无法取证。于是我们选择了行政途径，通过向市场管理局举报，由市场管理局检查大队取证保全了对方财务账册和技术图纸，并通过这些证据完成了行政处罚，使得客户不能再购买侵权公司的产品，保护了原公司的合法利益。

上述法律能力应占挑选考量的70%，剩下的30%，在于诉讼律师有能力向公检法清晰阐述法律关系，并与案件涉及的其他政府社会机构进行必要沟通。这就需要律师具备一定的社会网络，比如我本人同时担任政协常委、副秘书长、同济大学公共管理硕士教授、国际仲裁员等。

法总应该根据这两点能力，用加权平均的方式进行选择。

ALB：请进一步分享您近年来在争议解决领域取得的成就。

吕毅：我在多年执业经验中为多家世界五百强公司代理过重大疑难案件，包括国家电网集团、德国采埃孚集团、上海医药集团、雅高集团、金光纸业集团、中石油集团、东方航空集团、中粮集团、上海烟草集团等。近期另一件代表性案件，是2019年代理东航集团诉华信证券支付2.78亿元的资产管理纠纷案，作为标杆性案例，其结果会影响其他类似案例的判决。我们通过第一时间对网站上成功赎回的证明进行了证据公证、通过对方和我方证据证明资产管理人在投资和分配过程中存在重大过失，最终取得了全面胜诉。

ALB：What is the difference between a litigation lawyer and a transaction lawyer? What are the qualities and skills of a litigation lawyer?

Lyu: Transaction lawyers try the best to prevent risks, just like an army guarding the city, but a litigation lawyer has to make right strategies and tactics to “take field” like a general at war. There is a huge difference between the two.

Many legal counsels from Fortune 500 companies have rich experience in areas of transaction and compliance but lack skills in managing major arbitration and litigation cases. We have handled many cases with disputed amount of hundred of millions of yuan, which may amount to several years' profit of a listed company. After taking over a case, a litigation lawyer should first understand the core commercial interests of the client, which is the most critical ability. For instance, in 2019, we represented Shanghai Pharmaceutical Co., Ltd. in a contract dispute of 123 million yuan with a Hangzhou pharmaceutical company, which had 50 million yuan a registered capital and was later valued at 1.5 billion yuan, it was therefore impossible to sell a 30 yuan stake to Shanghai pharmaceutical at 1 yuan per share, and it was by explaining the business logic behind it that we persuaded the judge to rule that the two companies were not related.

I also serve as the executive secretary-general of the Shanghai branch of Z.H.ISLAND, an association of private enterprises, and have been the legal advisor to various companies over many years. That is why I have a profound understanding of the business goals and profit models of various enterprises.

ALB：How should a general counsel select litigation lawyers?

Lyu: In addition to a grasp of the commercial interests as mentioned above, the general counsel should first assess the professional capabilities of litigation lawyers. Litigation lawyers should be able to develop proper strategies and tactics based on the available evidence: first, they should be able to choose from the civil, criminal and administrative approaches depending on the weight of evidence; second, they should be able to use evidence to support the selected legal approach and provide a clear set of written documents. In a commercial secret infringement case where we represented the infringed company, a number of senior management established a new company to manufacture similar auto parts after they left the infringed company and sold these auto parts to the customers of the infringed company at half of the price. If the infringed company does not take actions, the former senior management may continue to steal its commercial secrets in the future, which may lead to the bankruptcy of the infringed company.

The problem is there are no markings on the auto parts, therefore it is hard to collect evidence. Thus, we chose the administrative approach. After reporting to the Market Administration Bureau, the inspection team of the Market Administration Bureau took actions to preserve financial books and technical drawings of the infringing company, and imposed administrative punishment based on such evidence, including banning customers from purchasing products from the infringing company, which have protected the legal interest of the infringed company.

The skills mentioned above account for 70 percent of the consideration when it comes to selecting litigation lawyers, and the remaining 30 percent lies in the lawyer's ability of clearly explaining the legal nexus to authorities such as public security bureaus, courts, procuratorates, arbitration centers and carrying out necessary communication with other social institutions. This requires lawyers to have certain social networks. For example, I am also the deputy secretary-general of the Chinese People's Political Consultative Conference (CPPCC) and a member of the Standing Committee of CPPCC, a professor of MPA of Tongji University, an international arbitrator and so on.

General counsel should, on pro rata basis, take these capabilities into consideration when selecting litigation lawyers.

ALB：Could you share more about your achievements in dispute resolution in recent years?

Lyu: I have dealt with many major and difficult cases for Fortune 500 companies, including State Grid Group, ZF Group, Shanghai Pharmaceutical Group, Accor Group, Sinar Paper Group, CNPC, China Eastern Airlines Group, COFCO Group and Shanghai Tobacco Group. One of the representative cases in recent time is the asset management dispute in 2019, in which we, on behalf of China Eastern Airlines Group, filed a case against CEFC Shanghai Securities Limited for 278 million yuan. As a benchmark case, the result will affect the judgment of other similar cases. We notarized the evidence of successful redemption on the website at the first time, proved the gross negligence of the asset manager in investment and distribution based on both parties' evidence, and finally won the case.

“In legal proceedings, it’s essential for lawyers to convince the judge to support their claims to the greatest extent. Our job is to help our clients go through the numerous facts to find grounds supporting their claims, and then convince the judge.”

“律师代理一个案件，其实最终的目的就是说服法官在最大程度上支持己方主张。因此，说服法官的能力可以说是律师的核心能力。而作为律师，就是要协助当事人从无数的事实中，找到相应的依据，争取让法官信服自己的观点。”

— Xu Yu, Hylands Law Firm 徐羽, 浩天信和律师事务所

litigation case in China, in which he and his team represented the defendant.

The plaintiff accused the defendant of setting a minimum resale price in the distribution agreement, which constituted a vertical monopoly agreement. It is provided for in Article 14 of the Anti-Monopoly Law of China that it prohibits the operator and the counterparty from entering into a vertical monopoly agreement that sets the minimum price at which a reseller can sell the product. Therefore, it seems that there was no reason to refute the plaintiff’s claim. But Wang Zhao and his team did not easily give up. They argued that the definition of a monopoly agreement is an agreement that excludes or restricts competition; furthermore, in a recent case, the U.S. Supreme Court decided to demote resale-price-maintenance antitrust cases to the rule-of-reason standard, thus an agreement that stipulates the minimum resale price does not constitute the violation of Article 14 of the Anti-monopoly Law; and it constitutes a monopoly agreement only if it “excludes or restricts competition.” In a civil lawsuit, the plaintiff bringing such a claim must prove there exists the “exclusion or restriction of competition.” Their views were accepted by the court. What’s more exciting is that their views are line with the provisions of the judicial interpretation issued by the Supreme People’s Court later

concerning the elements of vertical monopoly agreements.

ADVICE TO COMPANIES

Regarding how companies can effectively avoid disputes, Xie points out: “Enterprises should always pay attention to stay control of legal risks in the operation and transaction process, especially when signing documents such as relevant agreements. It is important to pay close attention to the language used in the contract. In my experience, disputes often arise because a word or expression used in a clause is ambiguous, and sometimes disputes arise from the expression of the general clauses of the contract which are often neglected. It is recommended that an enterprise should consult relevant legal professionals before determining its business model or conducting transactions, so as to control risks from the beginning.”

If a dispute is already raised, an enterprise should be very careful of words it uses or the statements it makes when communicating with the opposite party in the dispute, since certain words or expressions might be used as evidence against them, which might increase the chance of causing the enterprise to lose a case, Xie warns. The enterprise should start gathering and keeping evidence in favor of itself as early as possible, especially if the enterprise is the defendant; and the

种名称到底具不具备专属性、如果具备应该适用什么法律，这是当时困扰法院的核心问题，并一度导致案件难以推进。当时谢鹏律师及其团队在对法律、司法解释及类似案例做了大量研究后向法院提出：基于证据可以看到该展会因为多年的举办，已具备知名度，其名称具有巨大的经济价值，其作为一个类似于商标的专属权利应该得到保护，而在法律适用方面，由于本案本质上可理解作为一种不当的竞争及侵权行为，因此可适用《反不正当竞争法》进行审理。最终这些观点均被法院予以采纳，从而使本案得以顺利推进。

通商律师事务所陈浮律师分享了作为诉讼律师所面临的另一大挑战：在最短的时间内对案情进行透彻把握并制定出切实可行的诉讼策略。“对此，我们通常是团队作战，按照已经比较成熟的工作机制分工合作，充分发挥多位律师的聪明才智、能力与经验，一鼓作气完成任务。”陈浮律师说道。他和他的团队曾代理建银文化公司处理一个基于股权回购债务衍生的夫妻共债案。作为案件基础事实的投资交易结构很复杂，涉及拆除VIE架构、清退境外美元基金、拆除红筹架构回归A股等；案件的法律关系也比较复杂，涉及仲裁条款的扩张、股东回购责任认定、债务继承、夫妻共同债务的认定、债权人与债务人的举证责任分配等。接受委托后，由多位合伙人和律师组成的工作团队在短时间内迅速建立起来，集结了在包



专访北京市浩天信和律师事务所高级合伙人徐羽律师

Interview with Mr. Xu Yu, Senior Partner of Beijing Hylands Law Firm



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据我们所知，徐律师不仅是浩天信和资深诉讼律师，同时也是律所“争议解决专业委员会”的牵头人，请问在您看来，贵所争议解决部门的核心竞争力是什么？

在我看来，浩天信和争议解决部门的核心竞争力，是“帮助客户整体解决问题”的能力。争议的形成有很多原因，因此诉讼中双方的关系也未必一定是“势不两立”，我们要求自己从一个更高的角度，对每一个客户的诉求进行全面分析，从而提出整体解决的方案。

举个例子，我们处理过一个股权纠纷，客户是小股东，对于退出条款和大股东产生了巨大争议，导致对公司完全失控。在最初，客户希望通过知情权纠纷，了解公司的财务信息和其他相关信息，再从中找寻大股东的违约行为。但我们综合分析后发现，标的公司是一个房地产公司，唯一的资产是土地使用权，但由于公司大小股东长期不和，导致开发进程停滞，土地甚至面临被收回的风险。针对这一点，我们和客户讨论后，决定直接提起“公司清算之诉”，同时，通过公司清算之诉，再把大股东拉回谈判桌。最终，这个案子以庭外调解结案，大小股东均对结果表示满意。

作为一个优秀的诉讼律师，请问您对于一名诉讼律师在办案中需要注意的事项，有何建议？

作为一名诉讼律师，具有“扎实的法律功底”以及“专业、努力的工作态度”等，应该是基本要求，我就不多说了。在我看来，诉讼的核心是“说服法官”，我从这个方面讲讲我的心得。

首先，你应当简洁而高效的表达自己的观点。你整理的证据、发表的言辞，以及提交的文件，都应当紧紧围绕诉讼目的来进行，使得法官能够用最短的时间来理解你的意图和观点，让法官切实感受到你的专业、逻辑分明、以及积极推动案件进程的善意。

其次，你应当站在法官的角度思考问题。法官与律师不同，会站在一个更高的角度去思考问题，以及判决可能带来的影响。因此，作为律师，如果能够以法官的高度和角度去思考问题，那么你的观点就更容易被法官接受，自然也更能取得满意的结果。

徐律师在诉讼之外，是否还深耕其他领域，您能不能说一说诉讼和这些领域的关系？

最近几年，我还从事了相当一部分“破产与重整”案件的处理，其实从本质上来说，“破产与重整”和“诉讼”一样，都是为客户“纾困”，只不过在“破产与重整”领域，“纾困”的范畴更加宽广一些。因此，从传统的诉讼业务，向“破产与重整”作进一步的延伸，其实本来就是一个顺理成章和水到渠成的事情。

从另一个方面讲，其实这也是我刚才提到的“帮助客户整体解决问题”的需要。“诉讼”是“破产与重整”之前，甚至是过程中都无法回避的程序，而反过来，“破产与重整”也可以帮助企业摆脱众多诉讼，从而得到新生。因此，我本人也希望这两个领域的工作能够相辅相成，互相起到一个积极的促进作用。

Mr. Xu, We understand that you are not only an experienced litigation lawyer in the firm, but also the leading partner responsible for the Dispute Resolution Committee in the firm. Could you share with us what is the core competitive edge of your firm's dispute resolution department?

In my view, our dispute resolution department's core competitive edge is our ability to advise and support our clients in a comprehensive and integrated way. There are many causes why disputes arise, in this process, parties in a litigation may not be totally irreconcilable. We endeavor to understand each individual client's claims thoroughly so that we are able to provide a comprehensive and viable solution to each client.

For example, we once worked on an equity dispute in which our client is the minority shareholder. Our client and the majority shareholder disputed over many material issues including the exit clause in shareholders' agreements. Consequently, our client significantly lost its voice over the company's management. Initially, our client resorted to its right of information, through which it hoped to obtain the company's financial information and other material information, and to identify the majority shareholders' default events. However, we studied the case and noted that the subject company is a real estate company whose one and only asset is its land use right. Because the long-lasting disputes between its majority and minority shareholder, the real estate development severely stagnated and as a consequence, potential risks arose that the land use right may be taken back by the government. Based on our work and communications with client, we eventually advised our client to file for dissolution of the company, through which majority shareholder was dragged back to negotiations. In the end, the case was successfully settled out of court and both majority and minority shareholders were satisfied with the outcome.

As a prominent litigation lawyer, what is your suggestion to young litigation lawyers?

A litigation lawyer is expected to be well equipped with legal knowledge and act in a professional and diligent way. These are basic requirements which I would not spend too much time to elaborate. I would like to share my thoughts on how to convince the judge in litigation cases.

First, a litigation lawyer should be able to express his opinions in a concise and efficient way. All the evidence, oral or written arguments and documents provided should be pertinent to the claims so that judges can quickly understand your claims and opinions. A good litigation lawyer should be able to display his capabilities of logic reasoning, professional skills and positive intentions to solve the disputes.

Second, a litigation lawyer should be able to think from judges' point of view. Judges, different from lawyers, consider issues from a broader aspect. They always weigh over various potential influences that may arise from the judgment. If a lawyer can understand and address judge's concerns, his argument may be more accepted by the judge, correspondingly, the disputes may be solved in a more smooth and productive way.

Mr. Xu, do you also specialize in other areas besides litigation? What is your view of relationship between these areas and litigation?

In past several years, I have also been working on legal entities' dissolution and reorganization. In essence, dissolution and reorganization and litigation are in common. While it is more direct to understand that in dissolution and reorganization cases, we are assisting our clients to "walk out of deadlock and plight," actually so does this in litigation cases. Therefore, it is quite a matter of course to extend our specialized legal service from traditional litigation areas to dissolution and reorganization areas.

From another aspect, this is also the need to "support our clients to solve disputes in a comprehensive way", as I just mentioned. Litigation is an unavoidable process before and during the dissolution and reorganization proceeding. On the other hand, dissolution and reorganization can help many enterprises to get out of disputes and revive. Therefore, I hope that my work in these two areas could interact positively to better serve our clients.

enterprise should consult lawyers the earliest possible, and start preparing litigation materials under the guidance of professionals, so as to protect its legal rights and interests to the maximum extent, he advises.

According to Xu, an enterprise, especially a large enterprise, should “avoid disputes by thinking like there will be.” In other words, when a company conducts a specific activity or transaction, it should first assume that disputes may arise in the future, and all terms or conditions set forth in the contract or agreement should be based on how to avoid disputes, or turn the dispute to its advantage. On this basis, the enterprise should establish a complete set of risk control mechanism in advance to protect its legitimate rights and interests to the greatest extent if a dispute arises. Enterprises should also involve legal professionals in their day-to-day operation activities, who can help them discover and resolve disputes at the earliest stage. Taking an active attitude towards disputes and adopting effective measures will help gain advantage in the future dispute settlement if disputes arise.

LOOKING FORWARD

In general, there will be a higher demand for dispute resolution services, and the dispute resolution business will become more and more internationalized, diversified and specialized, Wang Zhao predicts. As the overall economic growth slows down or declines, there will be more disputes of different types. However, many of these disputes will be resolved through litigation or arbitration, which will lead to further growth of dispute resolution business. With the introduction of new laws and regulations, new types of disputes will continue to emerge. And as China sees rapid development in foreign trade, investment, and the Belt and Road Initiative related sectors, more and more overseas arbitration institutions set up their representative offices in China, and cases could possibly be heard in free trade zones, there will be more demands for solving cross-border disputes, Wang Zhao says. ●

括境内外融资及上市和婚姻家庭事等多个领域执业的精英。团队迅速反应，捋事实，找证据，查法律，找案例，拟方案，做论证，第一时间吃透案情并拟定了诉讼策略，并最终得到了法院的支持。

在处于明显不利的状态下扭转局势，为客户争取利益则是王钊律师所分享的职业挑战。对此他表示：“在这种情形下，不能轻易放弃，而是通过进一步对事实细节的了解和对法律（包括法理和域外法律实践）深入研究，去寻找机会。”王钊律师分享了他和团队代理被告参与的中国第一起纵向垄断民事诉讼案件。

原告指控被告在经销协议中约定的限定最低转售价格之条款是纵向垄断协议，而中国的《反垄断法》第14条确实禁止经营者与交易相对方达成限定最低转售价格的纵向垄断协议。在此情形下，似乎找不到可以反驳原告前述垄断协议主张的理由。但是，王钊律师及其团队并没有轻易放弃对该垄断协议主张的抗辩机会，从垄断协议的定义（即“排除、限制竞争的协议”），以及美国联邦最高法院最新案例对限定最低转售价格协议的认定从“本身违法原则”向“合理原则”转变的分析，提出了限定最低转售价格的协议本身并不构成违反《反垄断法》第14条的垄断协议，只有该协议“排除或限制了竞争”，才构成垄断协议。而在民事诉讼中，证明限定最低转售价格协议“排除或限制竞争”的举证责任在原告。当时最高人民法院有关审理垄断民事纠纷案件的司法解释还没有发布，也没有以往案例可以参考，但前述观点最终被法院所认可，而且也后来最高院颁布的司法解释对于纵向垄断性协议构成要件规定相吻合。

对企业的建议

关于企业如何有效避免纠纷这一点，谢鹏律师指出：“企业在经营及交易过程中要时刻注意法律风险的把控，尤其是在签署相关协议等文件时，需特别关注该等文件的用词及条款表述。根据我的工作经历，常常会因为某个条款中的某个字词具有歧义或者约定不明而发生争议，甚至会因经常被忽略的合同通用条款的表述而产生纠纷。因此，建议企业在确定经营模式及进行民

商事交易时，提前咨询相关的法律专业人员，从源头上控制风险。”而如果已经发生纠纷，谢鹏律师建议：第一，企业在与争议相对方进行沟通及应答时要十分审慎，某些表述或字眼都可能被对方作为日后诉讼的证据，从而增加自身的败诉风险；其次，要尽早开始并随时注重留存和收集有利于自身的证据，为后续诉讼做好准备，特别是在企业自身作为被告的情况下；最后，要尽早咨询律师，在专业律师的指导下积极准备诉讼材料，搜集各种形式的诉讼证据，建议企业尽早咨询和引入专业人士，最大限度地保护自身的合法权益。

徐羽律师认为，一个企业，特别是大型企业应当以“发生纠纷的思维来避免纠纷”。也就是说，企业在进行一个特定活动或者交易时，首先应当假设将来是有可能发生纠纷的，然后所有的条款或者条件，都应当围绕如何避免纠纷，或者在纠纷中取得优势来进行。在这个基础上，企业还应当提前建立一套完备的风控机制，即在日常生产经营活动中，就伴随着专业法律工作者全程参与，通过建立一套有效的风控预警机制，可以使得大部分纠纷在形成的过程中被发现并被协调解决。在纠纷发生后，为最大限度的保护好自己合法利益，应当积极应对。当前在国内，一些企业的管理者由于对法律的不熟悉对诉讼处于恐惧心理，往往对纠纷采取一种消极回避的态度。这种态度不仅会使得纠纷因得不到解决而不断扩大，还会在日后争议解决的过程中处于被动地位。

未来展望

王钊律师指出，总体而言，争议解决业务会出现增长化、国际化、多样化和专业化的趋势。随着整体经济形势发展放缓或者下滑，各类纠纷会出现上升趋势，随着大家法律意识的提高，这些纠纷很多会通过诉讼或者仲裁的方式解决，从而引发争议解决业务的进一步增长。此外，随着新的法律、法规的颁布和实施，新类型和专业型的争议解决业务会不断出现；随着中国对外贸易、投资以及一带一路的发展，以及境外仲裁机构在中国设立代表处以及可能在自贸区等特定区域审理案件，跨境的纠纷也会不断出现。 ●

競天公誠律師事務所
JINGTIAN & GONGCHENG

把握细节铸造成功

——专访十五佳诉讼律师上榜律师谢鹏



谢鹏

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ALB：作为一名杰出的诉讼律师，您的执业哲学是？

谢鹏律师：在职业生涯中，我从始至终一直秉承的是以解决争议为初心，以服务客户为核心，以细致负责为本心的思维方向和行为指南。首先，作为一名诉讼律师，不应过分地追求案件的胜诉率，我认为最终的目的是在存在风险时通过专业化的方式防患于未然，避免纠纷；而在发生争议后，高效率、高质量地解决问题和争议。我们工作的初衷是帮助客户降低风险、解决问题，而并非争论出谁是谁非。其次，客户的需求是我们关注的核心。在处理诉讼案件时，我们要了解客户的具体需要以及真正希望达到的效果，以客户利益的最大化为出发点，通过专业的方式，维护客户的合法权益。再者，我认为作为一名律师，执业过程中严谨、细致、负责的态度是不可或缺的。只有本着负责任、认真细心的态度，才能在职业生涯中走得更远、更好。

ALB：您参与过的争议解决案件涵盖了多个领域和行业，且多次在不利情况下反败为胜，对此您有何成功经验？请列举一个可公开的案例。

谢律师：诉讼律师要在案件原本不利的情况下反败为胜，首先要多角度地去挖掘案件新的突破口，而不拘泥于先前的思维模式和诉讼方法；第二，必要时需要跳出争议相对方的逻辑框架，通过梳理案情及证据创建一个更有利于客户的逻辑和方案，从而将争议的核心控制在我们新划定的范围和战场中。第三，要密切关注案件的细节之处，据我的经验，很多案件是在某处字句中发现契机，从而抓住核心要害。诉讼如战斗，法庭如战场。跳出原有模

式和逻辑，从细节处寻找新的角度和出发点，理顺新的逻辑，如开辟一片新的战场，能将相对方拉入有利于客户方的局面中。例如我近期处理过的一个案件，是某国有通信设备公司与某通讯科技公司因电子商务平台上的买卖合同而产生的纠纷。事件的起因是某通讯科技公司通过我方客户的电子商务平台下单购买商品，该通讯科技公司后续将线上平台的账户密码交给第三方使用且由第三方提货从而造成了货物的损失，进而引发了争议。该案的核心理是在没有明确书面授权的情况下，掌握密码的第三方通过QQ变更提货方式并提货能否视为该通讯科技公司（案件相对方）已收到货物。在一审中，争议相对方一直引导法院关注案件中已有类授权文件的形式及内容，通过放大相关文件的瑕疵，从而使法院认为该等类授权文件不足以构成对第三方的有效授权，进而判决客户败诉并向对方支付2亿余元的货款。在此不利的情况下，我们接受委托协助客户参与了案件的二审程序，对诉讼策略进行了调整。

一方面，我们没有从传统的买卖合同纠纷入手，而是以电子商务交易的特点为出发点，挖掘了电子商务本人行为原则这一电子商务交易中特有的原则，并以此为突破口，绕过已有类授权文件的形式及内容之争，直接从交易的本质特点进行切入，通过从相关判例中提炼立法及司法精神，向法院强调了电子商务交易中的本人行为原则，对电子商务交易中控制账号密码的一方当然地被视为代账户持有人进行行动，而无需书面授权这一观点进行深入阐释；另一方面，我们也重新梳理了案件的证据，并从中挖掘出不少细节，证明了第三方对于电子商务

平台上账号的控制，是经过争议相对方许可和确认的，且第三方几次通过QQ对订单的修改均得到了相对方的认可，由此推翻了相对方的整体逻辑，使二审法院直接改判客户不承担任何责任。

ALB：在管理团队的过程中，您在青年律师身上最看重的特质有哪些？他们应该着重培养哪些技能和品质？

谢律师：首先，青年律师要有责任心。只有负责任的律师，才能从客户的角度去思考问题，尽最大可能为其解决问题，获得认可；第二，要有细致严谨的工作态度。这不仅体现在对文件处理上的细致，我更看重的是在案件中对细致点的关注度和挖掘能力。因此，我认为青年律师应该着重培养严谨负责的工作态度，并培养自身对细节的敏感度和把握度。青年律师还要在平时的工作中注意积累经验，反思工作方法，培养发现问题和细致点的思维能力，从而提升自身的职业素养和专业能力。

ALB：您对争议解决业务的未来有何怎样的展望？您自身未来有何职业愿景和目标？

谢律师：争议解决业务未来将会向专业化、行业化进行发展，专业分工越来越强，这对诉讼律师的专业化要求也会越来越高。对于自身未来的职业愿景和发展目标，首先当然是做好自己的本职工作，尽心负责地服务好每个客户；同时我国法律法规在不断地更新，我会在处理好每个案件的同时，不断地学习，带领团队对新法新规进行研读，紧跟时代的步伐，提升专业化的高度、精度，从而增强自身以及团队的行业竞争力。