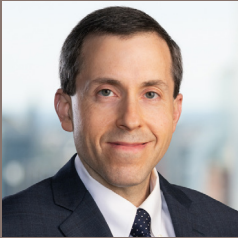


Partner, Washington, D.C.

Supreme Court and Appellate Litigation



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Education

J.D., Yale Law School, 2000
(Coker Fellow; Olin Fellow; William Wang Prize in Corporate Law)

B.A., Yale University, 1995
(*summa cum laude*; Phi Beta Kappa)

Bar Admissions

District of Columbia
New York

Experience

Law Clerk, Justice Antonin Scalia,
U.S. Supreme Court (2001-02)

Law Clerk, Hon. J. Michael Luttig,
U.S. Court of Appeals for the
Fourth Circuit (2000-01)

Shay Dvoretzky is the head of Skadden's Supreme Court and Appellate Practice. He represents clients in a wide range of appellate matters in the U.S. Supreme Court, federal courts of appeals, and state appellate courts.

Recognized nationally as a leading appellate litigator, Mr. Dvoretzky argued his 20th case in the Supreme Court this Term. He has been one of the most active practitioners before the Supreme Court in recent years, arguing three cases during the Court's 2022 Term and two more during the Court's 2023 Term. Mr. Dvoretzky's recent Supreme Court victories include:

- *Merck v. Albrecht*, in which he persuaded the Court to hold that a judge, not a jury, should assess a federal preemption defense, and should do so using ordinary, not heightened, legal standards (*The American Lawyer* discussed the case in naming Mr. Dvoretzky a 2019 Litigator of the Year, noting that he has "paved his way through the U.S. Supreme Court and federal courts of appeals with numerous unanimous wins.")
- *GE Energy v. Outokumpu*, in which he convinced the Court to hold that international arbitration agreements under the New York Convention should be treated on an equal footing with domestic ones under the Federal Arbitration Act (including as to enforcement by nonsignatories)
- *Rotkiske v. Klemm*, in which he persuaded the Court to reject a presumption applying the discovery rule to federal statutes of limitation
- *Caniglia v. Strom*, in which he persuaded the Court to unanimously hold that the so-called "community caretaking" exception to the Fourth Amendment's warrant requirement does not extend to the home

Mr. Dvoretzky has briefed and argued dozens of cases across virtually all federal courts of appeals. His work has spanned many substantive areas, including constitutional law, administrative law, antitrust, arbitration, bankruptcy, labor and employment, ERISA, tax, telecommunications, securities, preemption, energy, intellectual property, and criminal defense, as well as various complex statutory questions. He also leverages his appellate experience to counsel clients on key strategic issues at the trial level, and to brief and argue dispositive motions with an eye toward appeal. Mr. Dvoretzky's recent wins in the federal courts of appeals include:

- *NextEra Energy v. Kingdom of Spain* and *9REN Holding v. Kingdom of Spain*, in which he secured a precedent-setting victory for NextEra Energy and 9REN Holding, with the D.C. Circuit ruling that the district court had jurisdiction under the Foreign Sovereign Immunities Act's arbitration exception to enforce approximately €400 million in awards the companies secured against the Kingdom of Spain for violating the Energy Charter Treaty
- *Airlines for America v. Department of Transportation*, in which he secured a stay pending appeal in the Fifth Circuit for Airlines for America, the National Air Carrier Association, and the International Air Transport Association of the effective date of a Department of Transportation final rule on airline ancillary service fees on the grounds that the Rule likely exceeds the DOT's authority and would result in irreparable harm to airlines absent a stay.
- *Carter v. Southwest Airlines Co.*, in which he persuaded a unanimous Fifth Circuit panel to stay pending appeal an unprecedented religious-liberty training order directed at in-house attorneys of Southwest Airlines on the grounds that the order likely exceeded the district court's civil contempt authority and was likely unconstitutional

Shay Dvoretzky

Continued

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- *CSX Transportation, Inc. v. Norfolk Southern Railway Co.*, in which he secured a complete victory for Norfolk Southern in an antitrust case brought by CSX Transportation seeking hundreds of millions of dollars in damages, with the Fourth Circuit agreeing that CSX's claims were time-barred
 - *Eaton Corp. v. Commissioner*, in which he secured a groundbreaking victory for Eaton Corporation in Sixth Circuit transfer-pricing cross-appeals with more than \$350 million at stake, creating important precedent for other corporations facing retroactive action by the IRS
 - *Hunstein v. Preferred Collection & Management Services*, in which he convinced the en banc Eleventh Circuit, on behalf of Preferred Collection & Management Services, to order the district court to dismiss the plaintiff's Fair Debt Collection Practices Act claim for lack of Article III standing in a first-of-its-kind opinion after the Supreme Court's decision in *TransUnion LLC v. Ramirez* (2021)
 - *Airlines for America v. City & County of San Francisco*, in which he persuaded the Ninth Circuit to hold that civil penalties can make government action regulatory and subject it to federal preemption, and to remand the case for the district court to consider Airlines for America's preemption arguments
 - *Naimoli v. Pro-Football, Inc.*, in which he convinced the Fourth Circuit, on behalf of Pro-Football, Inc. (the Washington Commanders) and WFI Stadium, Inc., to rule that, under apparent authority agency principles, the Commanders' arbitration clause binds fans who entered a stadium using tickets presented on someone else's smartphone
 - *American Cruise Lines v. United States*, in which he secured a victory for Viking USA LLC in the Second Circuit, which held that the U.S. Maritime Administration reasonably determined that a lease of a vessel allowed Viking to operate cruises along the Mississippi River, and that the agency complied with its notice-and-comment requirements — a question of first impression in the courts of appeals

Mr. Dvoretzky was named one of America's Top 200 Lawyers by *Forbes* in 2024. He also is regularly recognized in *Chambers USA*, in which clients have called him "a brilliant legal mind" who is "capable of handling the most complex appellate matters," as well as a "tremendous strategist" who "delivers thoughtful and persuasive arguments that captivate the justices' attention and command their respect." Clients in *Chambers* also have commended his ability "to effortlessly reduce mind-numbingly complex legal problems to straightforward and easy-to-follow propositions." Clients told *The Legal 500*, which ranks Mr. Dvoretzky a "leading lawyer," that he is a "superb brief writer" who "handles oral arguments with grace and ease" and is "always prepared for all potential lines of questioning." He has been recognized repeatedly as an Appellate MVP by *Law360*, named to *The National Law Journal's* Appellate Hot List, chosen as one of Lawdragon's 500 Leading Litigators in America and listed in *Best Lawyers in America*. In addition, he has been honored as a Litigation Trailblazer by the *NLJ* and profiled in *Bloomberg Law's* inaugural edition of Pro Bono Innovators. According to a recent study of Supreme Court practitioners in the last five years, Mr. Dvoretzky ranks in the uppermost echelon of advocates by number of arguments before the Court and has the highest rate of cert grants of any of these elite practitioners.

Mr. Dvoretzky is a fellow of the American Academy of Appellate Lawyers and a member of the American Law Institute, the Edward Coke Appellate Inn of Court, and the U.S. Chamber of Commerce's Administrative Law & Regulatory Litigation Committee.

He has an active *pro bono* practice that includes criminal, immigration, and constitutional cases, including his recent Supreme Court victory in *Caniglia v. Strom*, which restricted the authority of police to enter homes without a warrant.

Before joining Skadden, Mr. Dvoretzky was a partner in the appellate practice at another global law firm. Previously, he clerked for Justice Antonin Scalia of the U.S. Supreme Court and Judge J. Michael Luttig of the U.S. Court of Appeals for the Fourth Circuit.