Shay Dvoretzky

Skadden

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 has argued 23 cases in the Supreme Court. He has been one of the most active practitioners before the Supreme Court in recent years, arguing 12 merits cases since 2020. Mr. Dvoretzky's recent Supreme Court victories include:

- *FS Credit Opportunities Corp. v. Saba Capital Master Fund, Ltd.*, in which he convinced the Court to hold that Section 47(b) of the Investment Company Act of 1940 (ICA) does not create an implied private right of action for private litigants to sue for certain violations of the ICA
- *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 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 and administrative law, tax, preemption, arbitration, antitrust, bankruptcy, labor and employment, ERISA, telecommunications, securities, 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:

- *Airlines for America v. Department of Transportation*, in which he secured a unanimous (17-0) victory for Airlines for America before the en banc Fifth Circuit, convincing the court to vacate a Department of Transportation rule that dictated how airlines communicated with their customers about ancillary fees. The victory follows earlier success in obtaining a stay of the rule pending appeal because it likely exceeded the DOT's statutory authority
- *Codoni v. Port of Seattle*, in which he persuaded the Ninth Circuit that federal law preempted a high-stakes state-law tort suit brought by a putative class against Alaska Airlines, Delta Air Lines, and the Port of Seattle based on alleged emissions from takeoffs and landings. The court agreed with his pathmarking arguments, issuing the first decision holding that Section 233 of the Clean Air Act preempted state-law claims against an airline in the statute's nearly 50-year history

- *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. When Spain sought Supreme Court review, he convinced the Solicitor General to recommend denying cert and persuaded the Court to reject Spain's petition
- *Carter v. Local 556*, in which he persuaded the Fifth Circuit in a high-profile Title VII religious discrimination case to reverse a jury verdict and an unprecedented contempt order against Southwest Airlines requiring its in-house lawyers to attend religious-liberty training; the win follows an earlier victory obtaining a rare stay pending appeal
- *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
- *Wallrich v. Samsung Electronics America, Inc.*, in which he secured a sweeping, first-of-its-kind victory for Samsung before the Seventh Circuit in a case that disrupted the mass arbitration model. The Seventh Circuit reinforced the obligation that each claimant has to show an arbitration agreement and endorsed a path for businesses to defeat mass arbitration schemes and the oppressive aggregate fees they threaten
- *Bernal v. Kohl's Corp.*, in which he secured a major victory for Kohl's before the Seventh Circuit in this mass arbitration appeal. The Seventh Circuit affirmed the denial of a petition to compel arbitration, creating important precedent limiting a court's ability under the Federal Arbitration Act to second-guess arbitral bodies' procedural determinations
- *In re Credit Default Swaps Antitrust Litigation*, in which he persuaded the Second Circuit, on behalf of Citibank and affiliates, to uphold enforcement of a settlement release barring investment funds from asserting antitrust claims against a group of banks stemming from their participation in the credit default swaps market
- *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 is recognized in Band 1 for Appellate Law in *Chambers USA*, in which clients have called him "the best at what he does" and "a brilliant attorney and appellate advocate" whom they "trust with the most difficult questions," 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 called him "a key strategic advisor" to "make the thorniest calls," and 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." *Chambers* respondents also noted that Shay and his colleagues are "a standout" "team" who "work incredibly hard" and "see things other people can't," but who "never lose their poise or sense of humor and perspective," even "under enormous pressure," and are "always respectful" and "appreciative of collaboration." Clients call them "some of the best appellate minds in America"—"incredibly smart, incisive and creative"—with "intellectual firepower" that makes them "unparalleled in their insight, the strength of their writing and their commitment to client service."

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Mr. Dvoretzky was honored as a BTI Client Service All-Star in 2026, named one of America's Top 200 Lawyers by *Forbes* in 2024 and selected as a recipient of a Burton Award for Distinguished Legal Writing in 2025 for co-authoring an article about the Supreme Court's decision in *Loper Bright*. He has been recognized repeatedly as an Appellate MVP by *Law360*, selected as a Litigator of the Year by *The American Lawyer*, named to *The National Law Journal*'s Appellate Hot List and selected as a finalist for its 2025 and 2026 Appellate Attorney of the Year awards, chosen as one of *Lawdragon*'s 500 Leading Global Litigators and 500 Leading Litigators in America, and listed in *The Best Lawyers in America*. He is recognized in the 2027 *Benchmark Litigation* guide as a National Practice Area Star for Constitutional Law and as a Litigation Star in the District of Columbia. 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. Additionally, Mr. Dvoretzky's contributions to the firm's work on transportation industry matters helped Skadden to be named a 2025 *Law360* Transportation Group of the Year.

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.