

# Detroit Legal News

News you cannot get anywhere else.  
www.legalnews.com

Vol. CXXV, No. 38

Friday, February 21, 2020

75 Cents

## DAILY BRIEFS

### Wayne State University co-hosting 'Election 2020 U.S. Foreign Policy Forum' Feb. 24

Election 2020 U.S. Foreign Policy Forum, co-hosted by Wayne State University and the Council on Foreign Relations (CFR). Panelists will include former government officials from Republican and Democratic administrations, who will discuss issues central to U.S. national security and of particular importance to Michigan. Topics include:

- How can business, labor and government collaborate to reduce poverty on regional and global bases?
- Will the United States-Mexico-Canada Agreement benefit American workers?
- How will the trade war with China impact the automotive industry?

The forum will be held Monday, Feb. 24 at the Community Arts Auditorium, 450 Reuther Mall in Detroit. Doors open at 5:30 p.m. The program is from 6-7 p.m.

Panelists include:

- Richard N. Haass, president, CFR; former special assistant to President George H.W. Bush, 1989-93
- Stephen J. Hadley, principal, RiceHadley-GatesManuel LLC; former national security advisor to President George W. Bush, 2005-09
- Jeh Charles Johnson, partner, Paul, Weiss, Rifkind, Wharton & Garrison LLP; former U.S. secretary of homeland security to President Barack Obama, 2013-17
- Penny Pritzker, founder and chairman, PSP Partners LLC; former U.S. secretary of commerce to President Barack Obama, 2013-17
- Moderator, Bianna Golodryga, senior global affairs analyst at CNN

The event, which is free and open to the public, also will be livestreamed at wayne.edu/live.

For further information and to confirm your attendance, visit Election 2020 U.S. Foreign Policy Forum.

### Judge OKs settlement over contamination

PLAINFIELD TOWNSHIP, Mich. (AP) — A federal judge on Wednesday approved a settlement with a western Michigan footwear company that faced a lawsuit over groundwater tainted with potentially harmful "forever" chemicals that are turning up in drinking water across the industrial state.

Wolverine Worldwide did not admit liability, but it agreed to pay \$69.5 million in a consent decree with the state of Michigan and Plainfield and Algoma townships that will go toward extending a municipal water system to about 1,000 homes with private wells that were affected by the contamination.

The deal also includes what's described as "comprehensive remediation plans" at the former tannery site along with additional studies and monitoring. Additionally, the company would continue to maintain water filters for homeowners without municipal water with PFAS levels over 10 parts per trillion, and provide some money for a filtration system for a water plant.

The approval by U.S. District Court Judge Janet Neff in the Western District of Michigan means work should begin this spring and take about five years to complete. The tentative settlement with Wolverine Worldwide and the townships was reached in December.

Find us on: **facebook**  
**LegalNews.com**

### INSIDE DLN

|                             |    |
|-----------------------------|----|
| Abandoned Car Auctions..... | 9  |
| Bankruptcies .....          | 14 |
| Calendar.....               | 17 |
| City Request for Bids.....  | 8  |
| Classified Ads.....         | 4  |
| Crossword.....              | 4  |
| Legal Notices.....          | 9  |
| Mortgages.....              | 4  |
| Public Hearing .....        | 8  |
| Ordinances .....            | 6  |



## Shapero Cup



The second annual Shapero Cup Moot Court Competition and Symposium was held Monday, Feb. 17, at the Theodore Levin U.S. Courthouse in Detroit. Local Bankruptcy Court judges participated as well as attorneys from the Detroit Metropolitan area. Teams of law students from law schools in Michigan, Ohio, and Tennessee competed. After the competition, an educational session discussed the same fact pattern the teams argued earlier in the day. Speaking at the symposium were (l-r) U.S. Bankruptcy Court Judge Joel Applebaum, Eastern District of Michigan; retired Bankruptcy Court Judge Walter Shapero; Lisa Gretchko of Howard & Howard Attorneys PLLC; and Stephen Gross of McDonald Hopkins LLC. The Shapero Cup Moot Court Competition and Symposium, named in Shapero's honor for his many years of outstanding service as a bankruptcy judge, is a nonprofit entity dedicated to the advancement of knowledge and understanding of bankruptcy law.

Photo by John Meiu

## E-filing now required in Michigan Supreme Court, Court of Appeals

By KELLY CAPLAN  
BridgeTower Media Newswires

DETROIT, MI — Attorneys and those who file documents on their behalf are required to make all filings with the Michigan Supreme Court and Michigan Court of Appeals electronically using the MiFILE system as of Feb. 1, unless excused by court order upon a motion for good cause.

The revision to Administrative Order 2014-23 is a welcome development for attorneys and legal professionals.

Sandra Vertel, legal assistant with Secrest Wardle in Troy, said she uses MiFILE extensively, and has been hoping for its use at the Court of Appeals and the Michigan Supreme Court for a long time.

"It makes sense," she said. "There are many other things I like about mandatory e-filing: it saves time, uses less paper, and is more convenient."

Stacey L. Heinonen of the Mike Morse Law Firm in Southfield said she consistently uses e-filing — first TrueFiling and now MiFILE — in her appellate practice, and appreciates its expansion.

"The convenience of the system is optimal," she said. "I remember, on occasion, driving to Lansing myself to physically file an Application for Leave to Appeal with the Supreme Court."

Michael J. Cook of Collins Einhorn Farrell PC in Southfield said he and his firm like the efficiency and relative ease of e-filing.

"We no longer need to print off, lug around, and store reams of paper," he said. "It also greatly reduces concerns with timely filing and fretting about whether traffic or other forces will prevent someone from making it to the clerk's office before the close of business."

### Benefits

Laurie K. Bowen, a legal assistant with Collins Einhorn Farrell PC, said among the benefits of e-filing are its immediacy.

"I personally like being able to see the immediate status of filings, what stage the filing is in, being able to get copies of payment receipts after the filing if they are misplaced, and filing and service history," she explained.

Vertel agreed.

"I like the Proof of Service that is automatically issued and part of the email that is received when the document is filed," she said. "I make it a habit to save the documents right away to my electronic 'file' with the actual document, any attachments, and the Proof of Service."

But MiFILE has benefits beyond efficiency. Users appreciate that it's not only tech-friendly, but eco-friendly as well.

"I appreciate that I don't receive a several-inches-high stack of paper from the opposing party," Cook said. "It's much better to receive opposing briefs in an electronic format, which, increasingly, are also searchable."

Heinonen agreed.

"E-filing offers cost savings and is environmentally responsible," she said. "The amount of paper alone consumed by, what was, traditional filing was substantial."

She added that clients will be better served through their attorneys' use of e-filing.

"Minimally, opposing parties will receive filings in as close to real time as possible rather than waiting for them to be delivered by the postal service," she explained. "This allows for maximum ability to prepare a thorough response."

See **COURT**, Page 2

## THE CONVERSATION

By ROBERT M. ACKERMAN  
Wayne State University

### Congress Fixes — Just a Bit — Rule that Stopped Injured Service Members from Suing for Damages



(THE CONVERSATION) — Members of the military who have long been barred by law from collecting damages from the federal government for injuries off the battlefield will finally be able to do so after Congress stepped in to amend the law.

The legislation represents progress for injured service members — but still limits who among them may press for damages.

Up until the end of World War II, the U.S. government enjoyed "sovereign immunity," a vestige of British rule when "the king could do no wrong" and the government could not be sued.

But in 1946, faced with the prospect of World War II veterans returning from the front only to be hit and killed in an accident on base, Congress enacted the Federal Tort Claims Act. Congress felt that it was only fair to allow people to recover damages for personal injury from the government when the government was negligent or irresponsible about caring for people's safety.

There were exceptions. Certainly Congress could not allow a soldier — or his family — to sue the government if, due to the orders of a superior officer, he were wounded or killed in battle. So the Federal Tort Claims Act prohibited suits by soldiers or sailors injured due to wartime combatant activities.

But later rulings limited servicemembers' rights even more, in ways not suggested by the language of the act.

The first of these was a case filed by the

surviving family members of a soldier. Lt. Rudolph Feres was a decorated World War II veteran who had parachuted into Normandy on D-Day. He survived that battle and others through the end of the war only to return to the U.S. and die in a barracks fire caused, according to his wife, by the explosion of a boiler known to be faulty.

Feres' widow also claimed that no fire guard had been posted on the fateful night. Joined to the case were two soldiers who claimed malpractice by army surgeons.

The court decided that the existing benefits scheme for military deaths and injuries was ample and denied the claims. To the further chagrin of the Feres family, the controversial ruling took on the name the "Feres Doctrine."

Cases sustaining Feres expressed the concern that allowing civilian courts to intervene in cases of this type would interfere with military discipline. Thus, the court declared that soldiers could not sue the government for damages for negligently caused injuries "incident to service," even if they did not involve combat.

Later suits building on Feres limited soldiers' rights even more — barring claims by a soldier allegedly raped by her drill sergeant and by members of the military harmed by their exposure to nuclear testing and the defoliant chemical Agent Orange.

### Questionable doctrine survives

All of these rulings meant that anyone who had the misfortune of getting hurt while on active duty, even if it wasn't in combat, could never sue for damages — while if the same person had gotten hurt on the job as a civilian, they would have had that right.

This disfavored treatment for servicemen was underscored in the aftermath of the space shuttle Challenger explosion, during which families of civilian crew members were able to file lawsuits against the government, but the family of the pilot who was a Navy captain on active duty could not.

The Feres Doctrine was therefore seen by many as unfair. Others, like the late Supreme Court Justice Antonin Scalia, criticized Feres because of its departure from the plain language of the Federal Tort Claims Act, which limits the exclusion to wartime "combatant activities." Still others believe that Feres fails to hold the military accountable for the kind of mistakes for which others are required to pay damages.

The Feres Doctrine nevertheless has continued to hold sway, with the Supreme Court refusing to reconsider the doctrine as recently as May 2019. Justice Clarence Thomas, in a dissent from the court's denial of certiorari in that case, *Daniel v. United States*, paraphrased Justice Scalia in stating that "Feres was wrongly decided and heartily deserves the widespread, almost universal criticism it has received."

In 1950, speaking for the Supreme Court in the *Feres* case, Justice Robert Jackson admitted, "If we misinterpret the Act, at least Congress possesses a ready remedy." That "ready remedy" finally came almost seventy years later, due to the persistence of a soldier suffering from terminal cancer.

### Green Beret goes to Congress

Sergeant First Class Richard Stayskal is a See **CONVERSATION**, Page 5

## University of Michigan investigates doctor sex abuse claims

By JEFF KAROUB, MIKE HOUSEHOLDER  
AND KATHLEEN FOODY  
Associated Press

ANN ARBOR, Mich. (AP) — Five former patients have alleged that a late University of Michigan physician sexually abused them during exams, the university says, with one accuser saying Dr. Robert E. Anderson's actions over several decades made him a "sexual predator."

A spokesman acknowledged Wednesday that some university employees were aware of accusations against the doctor prior to a 2018 complaint that led to a police investigation.

"It is our understanding from the police investigation that there were rumors and some indication that U-M staff members were aware of Dr. Anderson's inappropriate medical exams," said spokesman Rick Fitzgerald.

Robert Julian Stone told The Associated Press that Anderson assaulted him during a medical appointment at the university's

health center in 1971. Stone said he alerted university officials last summer, inspired by the national #MeToo movement against sexual misconduct.

Stone was first interviewed by The Detroit News, which began reporting on the allegations before the university announced the investigation. Stone, who is 69, said he contacted the newspaper because he felt "stonewalled" by the university when he sought documentation on the investigation this year.

"Finally, the university has understood that this is something that needs to be addressed in a public fashion," Stone said Wednesday, hours after the university in Ann Arbor released a statement saying that an outside, independent investigation has been launched into the allegations against Anderson.

The former director of University Health Service was a team physician for various sports at Michigan from 1966 until his retirement in 2003. He was the football team's physician for three-plus decades, working with coaches such as Bo Schembechler and Lloyd Carr. The National Athletic Trainers' Associa-

tion gave Anderson the President's Challenge Award in 1988.

Anderson was from L'Anse, Michigan, in the state's Upper Peninsula. He died in 2008. The school said it has set up a hotline for others who have information to come forward.

The revelations echo high-profile sexual abuse allegations made against sports doctors at other North American universities. Hundreds of young women and girls said they were molested by former Michigan State University sports physician Larry Nassar, who was sentenced in January 2018 to up to 175 years in prison in the abuse. About 350 men have sued Ohio State University over their alleged abuse by the late Dr. Richard Strauss at that university decades ago. And it's not the first accusation against a University of Michigan official: Provost Martin Philbert was placed on paid leave in January following accusations of sexual misconduct.

The Associated Press doesn't typically identify sexual assault victims, but Stone spoke publicly to The News and The AP.

See **ABUSE**, Page 2

Official Newspaper: City of Detroit • Wayne Circuit Court • U.S. District Court • U.S. Bankruptcy Court

### Money Matters

How to make your brand loyalty pay off

Page 2



### Commentary

Under Analysis: Hey, people, it's only a game

Page 3

### Friday Feature

Former gymnast recounts courageous stand against Larry Nassar in memoir

Back page