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THIS WEEK'S NEWS

DON'T BLAME the stingray. A Nassau Supreme Court judge last week threw out a case filed by a visitor to Riverhead's Atlantis Marine World aquarium who claimed he developed an infection after petting the marine animal. The stingray was part of the aquarium's "Touch and Feed" exhibit. John Reynolds alleged that after touching the stingray, he contracted mycobacterium marianum, a rare and difficult to cure bacterial infection.

According to a Nov. 23 decision by Justice Edward W. McCarty III, Mr. Reynolds alleged that the aquarium had failed to warn the public of the danger of contracting such an infection when touching a marine animal.

Edward A. Fleck of Garden City's Fleck, Fleck & Fleck, who represented Mr. Reynolds, said the infection settled into his client's hand, necessitating several operations to "dig" it out. The resultant scarring left Mr. Reynolds unable to move his finger. Mr. Fleck also said that his client had an open burn wound on the finger before he ever touched the stingray.

Atlantis moved for summary judgment, appending to its moving papers the affidavit of microbiologist Elliot Rank. Dr. Rank said he could find no previous reported instance of someone contracting such an infection at a public aquarium.

Granting the motion, Justice McCarty distilled the matter down to one of foreseeability. "There is nothing before the court which would indicate that defendant knew or should have known that members of the public were exposing themselves to an unreasonable risk of infection when engaging in stingray petting," he wrote in *Reynolds v. Atlantis Marine World*, 000616-2003.

Mr. Fleck called the brief, two-page decision "a shock." The judge "never got to the experts," he said, adding that he and his client have not yet decided whether they will appeal.

Alice Spitz, a partner in Manhattan's Molod Spitz & DeSantis represented the aquarium.

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