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Man v. God

By SANFORD F. YOUNG

My old friend John came to my office; he had suffered a major property loss. It was one of those rare summer storms. You may remember the hundred-plus-mile-an-hour winds reported in Tarrytown, N.Y., a few weeks ago, which blew over hundreds of trees as if they were a row of dominoes. Turns out that many of those trees were on John's property.

Because his house was untouched by the storm, his insurance policy doesn't cover the loss. This led me to thinking: Who can John sue?

What about the real estate broker who sold him the property? Maybe we could claim fraud. But the broker didn't represent that the lot was immune from storms. What about the weatherman? There was no warning that the storm was coming until maybe an hour before. But so what? Even if John had been warned, he wouldn't have been able to do anything to protect his trees.

The more I pondered and researched, the more dead ends I came across. This is one of those cases that they call an act of God. Hence, there is no one to sue. Or is there? If it is an "act of God," God is responsible. Just like anyone else, God should be held accountable for his negligent or mischievous (intentional) deeds.

You may be skeptical. But why? Where is it written that God is immune from suit? I can't find it in the Bible. And it's certainly not written in the Constitution or any statute I can find.

Let's consider the substantive case against God. God created the heavens and the earth, as well as wind, heat and rain, which constitute the framework for unpredictable weather. God also made trees—in John's case, trees that were not strong enough to withstand God's winds. Whether through design (intent) or oversight (negligence), God should be held liable for his acts. Alternatively, we could sue under a theory of implied warranty. Since God created unpredictable and at times damaging weather, he should have given us trees that can withstand those foreseeable factors. Other possible causes

of action, such as fraud or malice, also seem promising.

Suing God poses some unusual procedural questions, though they turn out to be less daunting than they seem. For one, how do you serve God with a summons? Well, consider the purposes of serving a summons. First, to give notice. But since God is omniscient, he knows already. Second, to exercise jurisdiction over the party. In this case, God has jurisdiction over us. That should be good enough.

In what court can we sue God? Most of us will have difficulty with the idea of bringing God into our own civil courts. (Have you seen what the New York courts look like? It's embarrassing, and surely not worthy of God's appearance.) But we don't have to. After all, we are taught that God maintains the ultimate court over us.

Would God's own court unfairly favor God, putting mortals like John in an unfavorable position? Perhaps. But consider: God is loving and fair. He judges us all the time in matters of much greater import, such as who will live and who will die. So we must believe that he is capable of deciding a simple

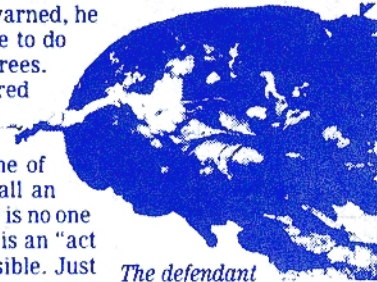
monetary lawsuit, and that he will be fair to John. And there is precedent for a party to be sued in his own court. For instance, the United States is sued in its own courts, such as the U.S. Court of Federal Claims. If these courts can be fair, surely we can expect no less from God.

Another procedural question is whether God can claim that he is too busy to be bothered with mundane matters, as President Clinton claimed in the Paula Jones case. But the U.S. Supreme Court ruled against Mr. Clinton; and we have to assume that God, who is everywhere at all times, could manage one additional chore. Besides, if God were granted a stay, for how long? God's term, unlike Mr. Clinton's, is forever.

Finally, who will defend God? I propose a form of legal aid. Churches, synagogues and mosques can take turns providing clergymen to represent God on a pro bono basis.

So if you're a lawyer, don't be disheartened the next time a client appears with a case with no apparent defendant in sight. Just declare it an act of God and take it from there.

Mr. Young is a New York lawyer specializing in complex litigation and civil appellate matters.



The defendant