

“Nightmare on Elm Street”



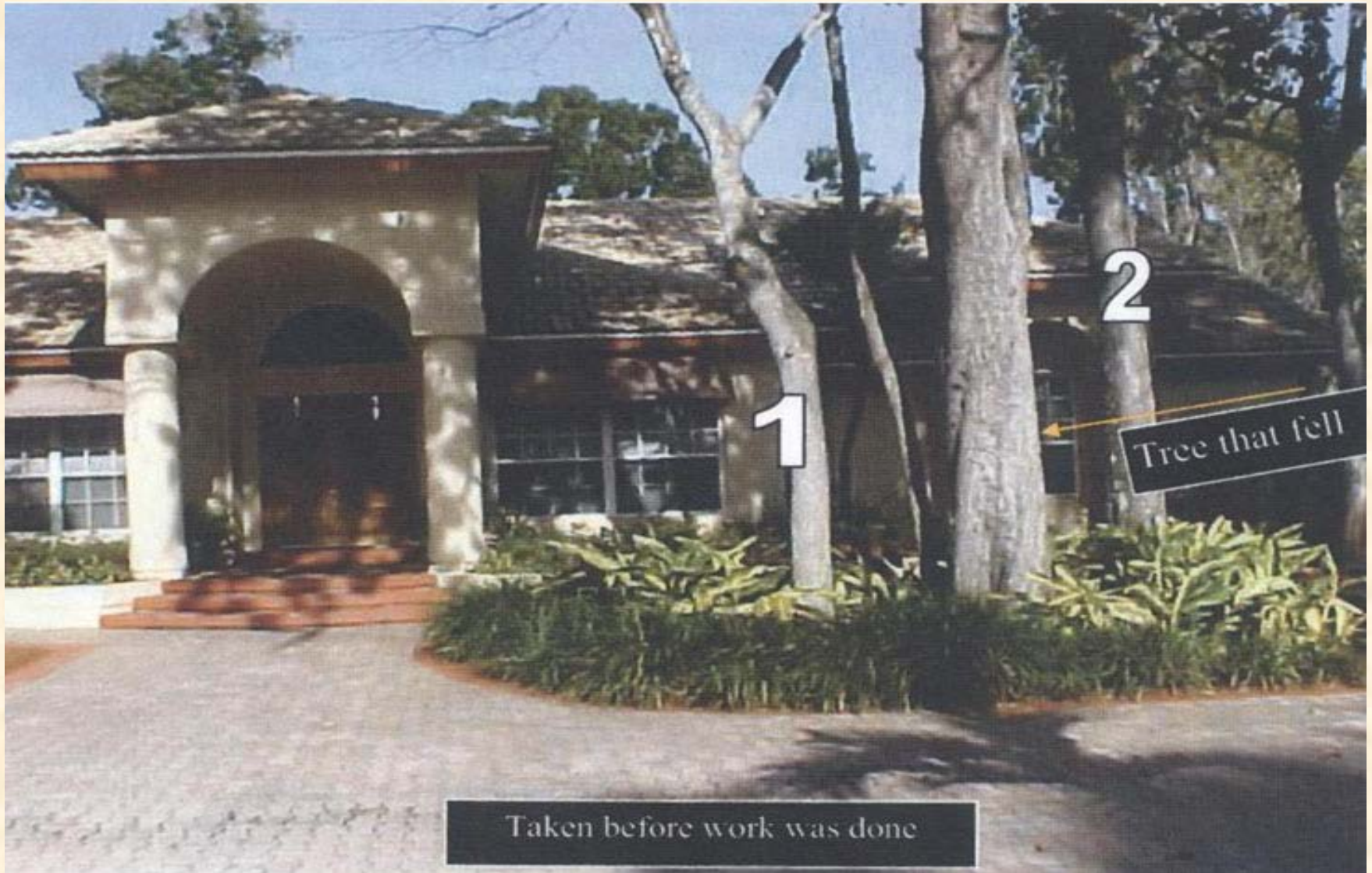
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“Expert Tree Consultants”

Case Study #1

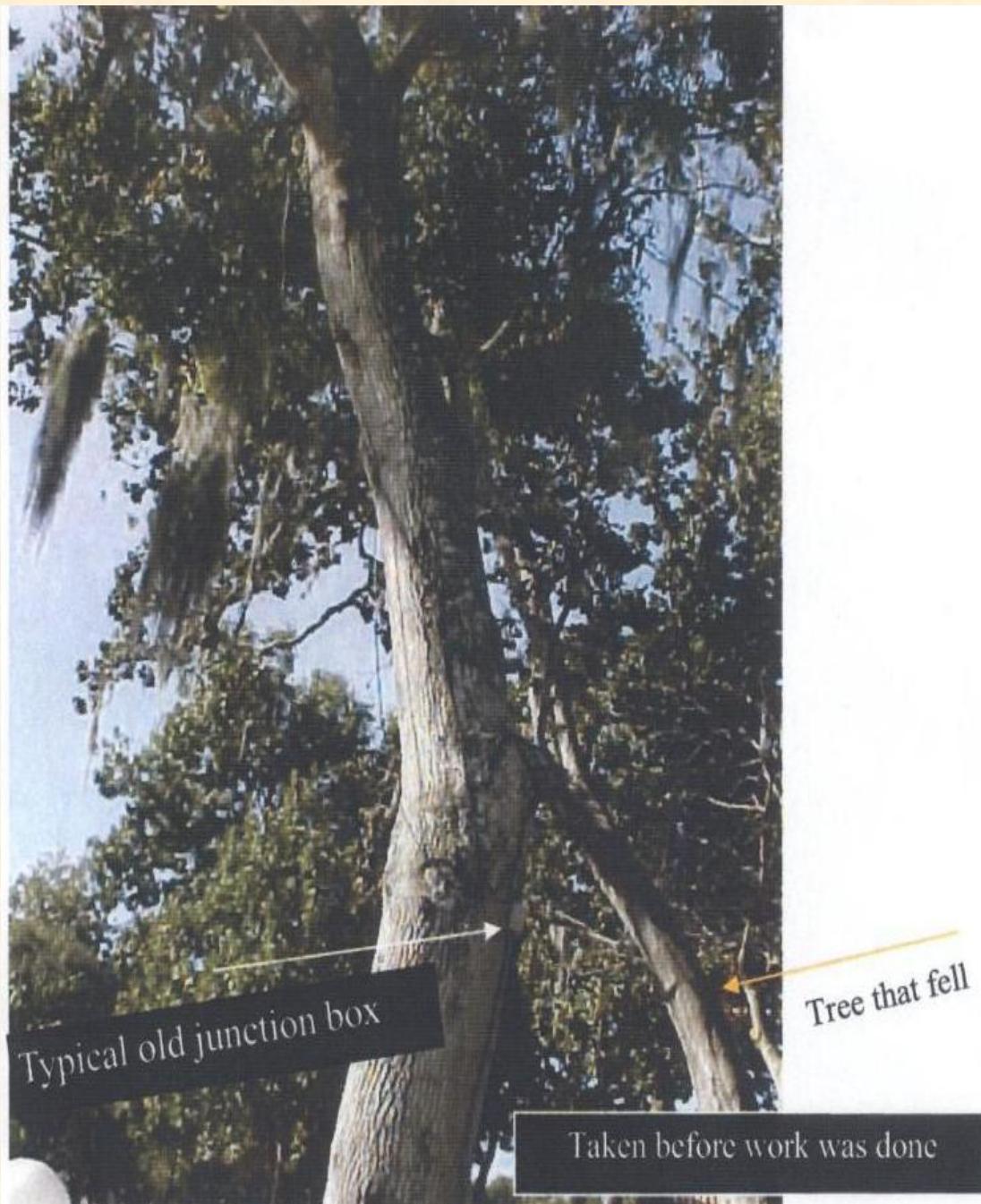
“Exercise Can Kill You”



WRONGFUL DEATH
Who is liable?



1. What and whom contributed to negligence?
2. What is negligence?
3. Was there negligence?

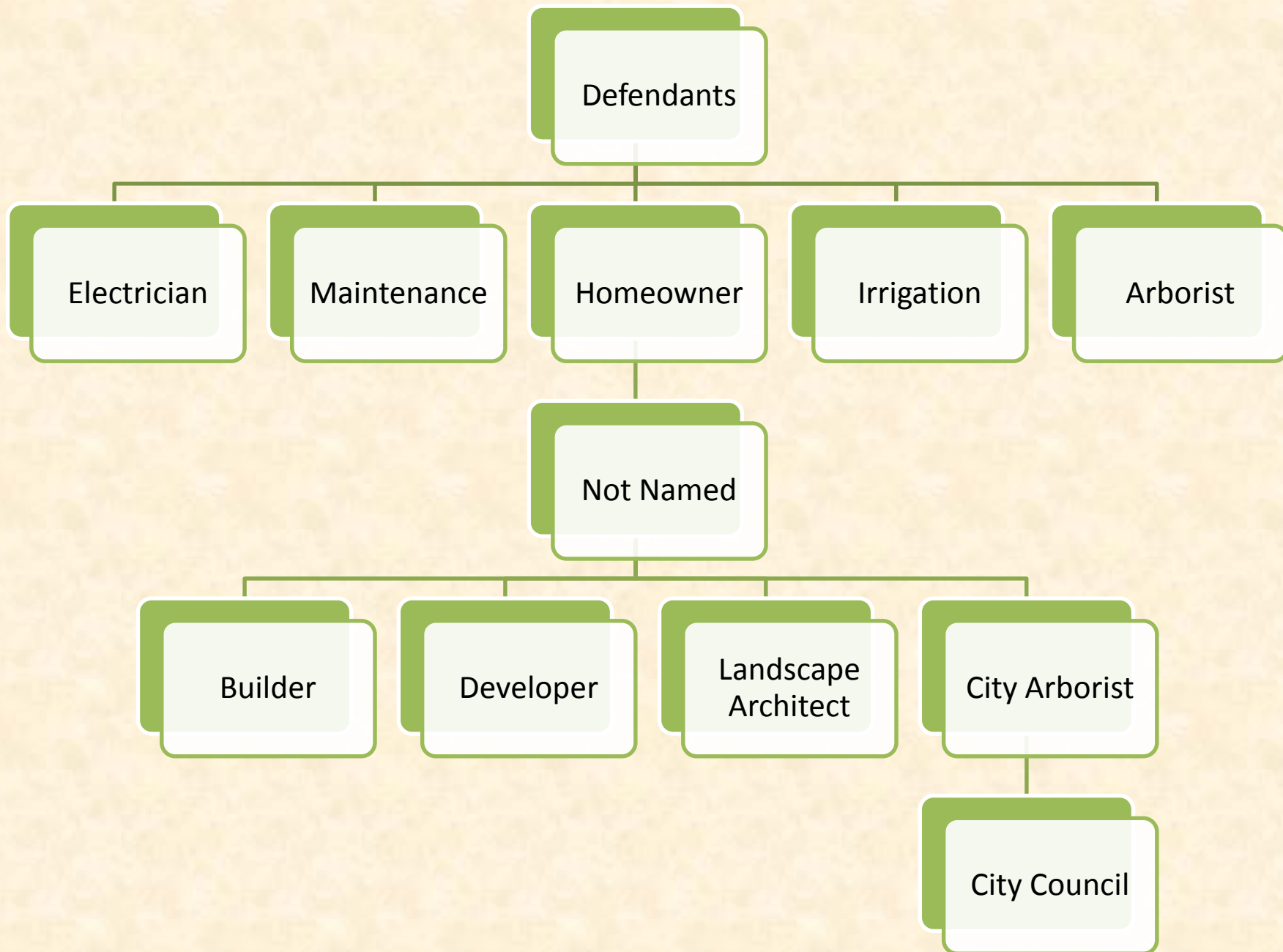


- Did the homeowner have a duty to inspect?
- What, if anything, would put the homeowner on notice?

THE SMOKING GUN



- The genealogy of negligence





Case Study #2

"Don't Climb That Tree"



- No trespassing Signs
 - Fenced in Area
 - Rural vs. Urban
 - Attractive Nuisance

Case Study #3

"Bad Hunting Day"



What do you see in this picture?

Salient facts:

- Urine bottle
- Yellow pine
- Growth rate – one inch per year
- Blood alcohol

"6 is enough"



Kumho Tire Co., Ltd. V. Camichael

Daubert applicable to technical and other non-scientific expert testimony

Minivan overturns after tire blow out, killing one and injuring others

- Plaintiffs rely upon expert's opinion, which was based upon observations and subjective analysis
- Expert opinion based upon the application of a personally developed checklist for tire failure
- Court excludes expert's testimony, "as observation and subjective analysis", enters summary judgement against plaintiff



- *Kumho* creates reliability in:
 - (1) How often the experience-based methodology has produced erroneous results?
 - (2) Is method generally accepted in the relevant community?
 - (3) Is method and investigation peer approved?

Case Study #4
“If I Can’t See You,
You Can’t See Me”



- Clear sight-lines
- Property owner installs landscape hedge
- Property owner does not maintain height of hedge for clear sight- lines
- Bicyclist is injured when pulling out onto the street because he did not see oncoming traffic



1. Does property owner have a duty to maintain height of hedge so that a clear sight line is established?
2. Does a government agency have a duty to maintain heights of plants so that clear sightlines are established?
3. Who has the duty when the homeowner installs and maintains subject hedge in right-of-way?

Case Study #5

Do you want to super size
that?



- “Jack Leg” climbs tree and cuts his own safety harness, falls and now is a paraplegic
- Review of fast food restaurant policy manual pertaining to closing drive-thru
- Right tree, wrong place
- Property inspection of landscapes at other fast food restaurants from the same chain
- Review of landscape drawing

Case Study #6

“Not for Human Consumption”



- Landscape architect produces a design/build landscape proposal to client
- Client accepts the design and cost to install
- Clients child picks angel trumpet flower and ingests part of it
- Child becomes violently ill
- Was there negligence by architect?

1. Did landscape architect have a duty to inform his client that the flower of the angel trumpet tree is toxic?
2. If so, did the warning have to be in writing?
3. Does constructive knowledge play a part in this matter?

Case Study #7

“Public Welcome?”

