

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS  
CIVIL DIVISION

FILED

F.T. SMITH DIST.

2009 APR 1 PM 4 24

S. Hassett  
CIR. CLERK SEB. CO.

STEVEN A. BRIGANCE, as personal  
representative of the estate of Maurice Brigance,  
Jr., deceased; and on behalf of the wrongful death  
beneficiaries of Maurice Brigance, Jr.

PLAINTIFF

v.

CV 2009- 651 (ST)

THE BROOKFIELD AT FIANNA OAKS, LLC,  
d/b/a THE BROOKFIELD AT FIANNA OAKS;  
(parent corporation) WILSON, DARNELL AND  
MANN, PA ; CRAWFORD CONSTRUCTION  
COMPANY; and CRAWFORD  
CONSTRUCTION COMPANY, INC.

DEFENDANTS

COMPLAINT

Steven A. Brigance, as personal representative of the estate of Maurice Brigance, Jr.,  
deceased, and on behalf of the wrongful death beneficiaries of Maurice Brigance, Jr. states:

JURISDICTIONAL STATEMENT

1. Steven A. Brigance is the personal representative of the estate of Maurice  
Brigance, Jr., deceased, pursuant to Letters Appointing Special Personal Representative issued  
by the Circuit Clerk of Sebastian County Arkansas, which is attached hereto as Exhibit "A".

2. The Statutory Wrongful Death Beneficiaries of Maurice Brigance, Jr. are Dorothy  
Brigance, wife of Maurice Brigance, Jr., Marcelena Brigance, adult daughter of Maurice  
Brigance, Jr., Steven A. Brigance, adult son of Maurice Brigance, Jr., and C.J. Brigance, adult  
brother of Maurice Brigance, Jr.

3. Maurice Brigance, Jr. was an adult resident of Sebastian County, Arkansas who  
died on or about January 31, 2009 in Sebastian County, Arkansas.

4. This action is brought pursuant to the Arkansas Survival of Actions Statute, Ark.  
Code Ann. § 1662-101 and the Arkansas Wrongful Death Act, Ark. Code Ann. § 1662-102.

5. Defendant The Brookfield at Fianna Oaks, LLC is an Arkansas domestic Limited Liability Company with its principal place of business at 2300 Fianna Oaks, Fort Smith, Arkansas, 72715. Its agent for service of process is the Corporation Service Company, 300 Spring Building, Suite 900, 300 S. Spring Street, Little Rock, Arkansas, 72201. The Brookfield at Fianna Oaks, LLC, owned and operated an assisted living facility wherein Maurice Brigance, Jr. and his spouse, Dorothy Brigance, resided.

6. Upon information and belief, Wilson, Darnell and Mann, PA (hereinafter referred to as WDM). WDM is a professional association located at 105 North Washington, Wichita, Kansas. WDM is the architectural firm who designed The Brookfield at Fianna Oaks, LLC facility.

7. Defendant Crawford Construction Company is an Arkansas domestic corporation. It may be served through its agent, Gary Crawford, 1103 South 28th Street, Van Buren, Arkansas, 72956. Defendant Crawford Construction Company designed, built, and inspected The Brookfield at Fianna Oaks.

8. Defendant Crawford Construction Company, Inc. is an Arkansas domestic corporation. It may be served through its agent, Gary Crawford, 1103 South 28th Street, Van Buren, Arkansas, 72956. Defendant Crawford Construction Company, Inc., designed, built, and inspected The Brookfield at Fianna Oaks.

9. This Court has jurisdiction over the parties hereto, the subject matter hereof, and venue is proper.

### FACTUAL ALLEGATIONS

10. Maurice Brigance, Jr. was a resident of The Brookfield at Fianna Oaks, located at 2300 Fianna Oaks, Fort Smith, Arkansas, 72715, from on or about May 27, 2008, until January 7, 2009.

11. Prior to January 7, 2009, Maurice Brigance, Jr. was relatively healthy by any standard for a man 20 years his junior and independently ambulatory.

12. On or about January 7, 2009, as Maurice Brigance, Jr. was attempting to open the door to the closet in his room at The Brookfield at Fianna Oaks, the door came loose from its mounting and fell onto him causing him to sustain numerous injuries, including, but not limited to, a fractured pelvis, seriously injured knee, abdominal rupture, with possible other internal injuries that were revealed prior to death through substantial bleeding, and numerous contusions and abrasions. Maurice Brigance, Jr. was fully conscious, alert and cognitive 22 of the 24 days he lived following this event. His condition declined with incontinence, inability to move voluntarily, inability to swallow or eat for the last seven days. Maurice Brigance, Jr. was fully aware of his impending death, along with his inability to eat or drink. Maurice Brigance, Jr. was caused to suffer extreme and unnecessary pain, anguish, and emotional trauma as a result of his injuries.

13. After suffering these injuries, Maurice Brigance, Jr. was hospitalized for 24 days, and he remained in the hospital until he died on January 31, 2009, as a result of his injuries, as reflecting in his death certificated attached as "Exhibit B".

### NEGLIGENCE

14. Defendants, Crawford Construction Company and/or Crawford Construction Company Inc., was negligent in the construction and supervision of construction of the facility in

that they failed to follow design plans allowing an improper track system to be installed in the Brigance's room

15. That Defendants, Crawford Construction Company and/or Crawford Construction Company Inc., failed to properly inspect the facility allowing improper door tracking systems to be installed in the Brigance's room.

16. The acts of negligence on the part of Crawford Construction Company and/or Crawford Construction Company Inc. were a proximate cause of the injuries and death of Maurice Brigance, Jr.

17. The Separate Defendant, The Brookfield at Fianna Oaks, LLC d/b/a The Brookfield at Fianna Oaks, was informed by Maurice Brigance, Jr. and Dorothy Brigance of defects in the door on multiple occasions. They were further advised of defects in the door by Steven Brigance. After receiving notice of defective conditions in the door, this Separate Defendant made numerous unsuccessful attempts to correct the defect.

18. The Separate Defendant, The Brookfield at Fianna Oaks, LLC d/b/a The Brookfield at Fianna Oaks, knew or had reason to know of the dangerous or defective condition of the door and failed to take appropriate steps to protect the health and safety of Maurice Brigance, Jr.

19. The acts and omissions of the Separate Defendant, The Brookfield at Fianna Oaks, LLC d/b/a The Brookfield at Fianna Oaks, were a proximate cause of the of the injuries and death of Maurice Brigance, Jr.

20. The Separate Defendant, The Brookfield at Fianna Oaks, LLC d/b/a The Brookfield at Fianna Oaks, owed a non-delegable duty to residents of The Brookfield at Fianna

Oaks, specifically including Maurice Brigance, Jr., to ensure that the premises were adequately safe and did not present an unreasonable risk of injury and death.

21. The Separate Defendant, WDM, knew or had reason to know at the time it designed the facility that such was intended as an assisted living facility; specifically, that the doors would be subject to use by elderly and infirm individuals. Notwithstanding this knowledge, the Defendant elected to use solid core doors, weighing approximately 80 pounds. This Defendant knew or should have know with due diligence that these doors would present an unreasonable risk of injury or death to residents of The Brookfield at Fianna Oaks facility in the event the door or doors broke or otherwise separated from their fittings or track system. The acts and omissions of the Separate Defendant, WDM, were a proximate cause of the injuries and death of Maurice Brigance, Jr.

22. The Separate Defendant, WDM, failed to properly inspect the facility to determine that the door track was not installed as designed or intended.

23. The injuries, suffering, and death of Maurice Brigance, Jr. were directly and proximately caused by acts of negligence on the part of the defendants both jointly and severally, as follows:

- a. Defendants selected and installed improper doors and/or mountings;
- b. Defendants improperly installed the door and its mountings;
- c. Defendants failed to properly inspect the door and its mountings;
- d. Defendants were aware that the doors created a dangerous condition, and failed to repair it;
- e. Defendants were aware that the doors created a dangerous condition, and failed to warn Maurice Brigance, Jr., of the risk.

GROSS NEGLIGENCE, WILLFUL, WANTON,  
RECKLESS, AND/OR INTENTIONAL CONDUCT

24. Plaintiff incorporates all of the allegations made in paragraphs 1-17 above.

25. As a result of prior problems with the doors in The Brookfield at Fianna Oaks facility, defendants knew that they were placing Maurice Brigance, Jr. at risk of the injuries described hereinabove, and, despite that knowledge, took no action to make the premises safe, and recklessly, wantonly, or intentionally exposed Maurice Brigance, Jr. to the risk of the injuries he suffered.

RESERVATION OF ADDITIONAL CLAIMS

26. Plaintiff reserves the right to plead further upon additional discovery, to state additional claims and to name additional parties to this action.

DAMAGES

27. As a direct and proximate result of the acts of negligence on the part of the defendants, Maurice Brigance, Jr. suffered a serious personal injury including, but not limited to, medical expenses, conscious pain, suffering and loss of life. Dorothy Brigance suffered emotional anguish as a direct result of the death of Maurice Brigance, Jr., as well as loss of income, loss of consortium and companionship with her husband of over 68 years. The Statutory Wrongful Death Beneficiaries each suffered damages as allowed by law for loss of companionship and association with Maurice Brigance, Jr. The Estate of Maurice Brigance, Jr. and the Statutory Wrongful Death Beneficiaries are entitled to such damages as a jury may award at the trial of this cause.

28. The actions of the Defendants were in conscious disregard to the safety and welfare of Maurice Brigance, Jr. from which malice may be inferred entitling the Plaintiff to punitive damages.

DEMAND FOR JURY TRIAL

The plaintiff demands a jury trial for all issues of fact presented by this action.

WHEREFORE, PREMISES CONSIDERED, plaintiff prays that summons be issued for the defendants, and that following a jury trial of this action the plaintiff be awarded a judgment against the defendants in an amount to which the plaintiff may be entitled to fully and fairly compensate plaintiff for all damages that have been suffered, for punitive damages as are appropriate under the circumstances, and for any and other damages, costs, fees, and all other proper relief to which plaintiff may be entitled in the premises.

RESPECTFULLY SUBMITTED.

By: 

REX W. CHRONISTER  
Attorney at Law  
Ark Bar No. 79032  
Chronister, Fields & Flake, PLLC  
P.O. Box 66  
Fort Smith, AR 72902  
(479) 783-4060

IN THE CIRCUIT COURT OF SEBASTIAN COUNTY, ARKANSAS  
FORT SMITH DISTRICT  
PROBATE DIVISION *II*

IN THE MATTER OF THE  
MAURICE BRIGANCE, Jr., deceased

PR-2009- 81

STEVEN A. BRIGANCE

PETITIONER

LETTER OF  
SPECIAL PERSONAL REPRESENTATION

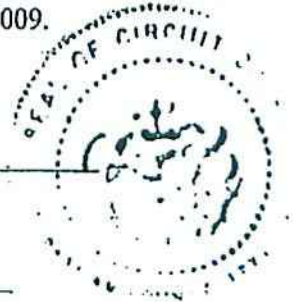
BE IT KNOWN:

That Steven A. Brigance whose address is 10101 Stephens Court, Fort Smith, AR 72908, have been duly appointed Special Personal Representative of the Estate of Maurice Brigance, Jr., deceased, who died on or about January 31, 2009 and having qualified as such Special Personal Representative, is hereby authorized to act as, for and on behalf of the Estate and wrongful death beneficiaries and to take position of the property thereof as authorized by law and further, to conduct investigation and such legal actions as may be necessary to pursue a wrongful death cause of action on behalf of the Estate:

ISSUED this 26 day of February, 2009.

CINDY GILMER

CLERK



I, CINDY GILMER, Circuit and Probate Clerk in and for Sebastian County, Arkansas, hereby certify that the above and foregoing is a true and complete copy of the LETTERS THAT ARE NOW IN FULL FORCE AND EFFECT as the same appears of record in this office.  
Witness my hand and seal this

26 day of February 2009  
CINDY GILMER, CIRCUIT AND PROBATE CLERK  
By: [Signature]  
Deputy Clerk

BY: [Signature]  
DEPUTY CLERK





# STATE OF ARKANSAS

## ARKANSAS DEPARTMENT OF HEALTH Vital Records CERTIFICATE OF DEATH

TYPE PRINT IN  
PERMANENT  
INK  
SEE  
INSTRUCTIONS

1 DECEASED LEGAL NAME (Last, First, Middle Initial) <b>Maurice "Jack" Brigance, Jr.</b>		2 SEX <b>Male</b>	3 DATE OF DEATH (Month, Day, Year) <b>Jan. 31, 2009</b>	4 TIME OF DEATH <b>4:47</b>	5 AM <input type="checkbox"/> PM <input checked="" type="checkbox"/>
6 SOCIAL SECURITY # <b>419-03-6604</b>	7a AGE - last birthday <b>93</b>	7b UNDER 1 YEAR Males: <input type="checkbox"/> Females: <input type="checkbox"/>	7c UNDER 1 YEAR Males: <input type="checkbox"/> Females: <input type="checkbox"/>	8 DATE OF BIRTH (Month, Day, Year) <b>Sept. 24, 1915</b>	9 PLACE OF BIRTH (City, Town, State or Foreign Country) <b>Mobile, Alabama</b>
10 RESIDENCE STATE OR FOREIGN COUNTRY <b>Arkansas</b>	11 COUNTY <b>Sebastian</b>	12 CITY OR TOWN <b>Fort Smith</b>	13 ZIP CODE <b>72908</b>		
14 NUMBER AND STREET <b>2300 Flanna Oaks</b>	15 APART # <b></b>	16 ZIP CODE <b>72908</b>	17 OFFICE CITY (State) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
18 EVER IN US ARMED SERVICES? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	19 MARITAL STATUS AT TIME OF DEATH <input checked="" type="checkbox"/> Married <input type="checkbox"/> Widowed <input type="checkbox"/> Never Married <input type="checkbox"/> Married but Separated <input type="checkbox"/> Divorced <input type="checkbox"/> Unknown		20 SURVIVING SPOUSES' NAMES (with present and former marriage) <b>Dorothy Bell</b>		
21a IF DEATH OCCURRED IN A HOSPITAL <input checked="" type="checkbox"/> Inpatient <input type="checkbox"/> Emergency Room <input type="checkbox"/> Out of Hospital		21b IF DEATH OCCURRED SOMEWHERE OTHER THAN A HOSPITAL <input type="checkbox"/> Nursing Home <input type="checkbox"/> Hospice Facility <input type="checkbox"/> Long Term Care Facility <input type="checkbox"/> Other (Specify)		22 COUNTY OF DEATH <b>Sebastian</b>	
23 FACILITY NAME (If residential care unit) <b>Peachtree Palliative Care Unit</b>		24 CITY OR TOWN <b>Fort Smith</b>		25 ZIP CODE <b>72917</b>	
26 FATHER'S NAME (If known) <b>Maurice Brigance, Sr.</b>		27 FATHER'S NAME (If not known, list nearest relative) <b>Jimmy Fitzgerald</b>			
28 INFORMANT'S NAME <b>Steve Brigance</b>		29 RELATIONSHIP TO DECEASED <b>Son</b>	30 MAILING ADDRESS (Home and Home - PO Box City, State, ZIP Code) <b>10101 Stephens Court, Ft. Smith, AR 72908</b>		
31 METHOD OF DISPOSITION <input checked="" type="checkbox"/> Burial <input type="checkbox"/> Cremation <input type="checkbox"/> Donation <input type="checkbox"/> Entombment <input type="checkbox"/> Removal to State <input type="checkbox"/> Other (Specify)					
32 PLACE OF DISPOSITION (Name of cemetery, crematory, etc.) <b>Pine Crest Cemetery</b>			33 LOCATION - CITY, TOWN AND STATE <b>Mobile, Alabama</b>		
34 EMPALMER'S NAME <b>Sean Rollins</b>		35 EMPALMER'S LICENSE # <b>1885</b>	36 SIGNATURE (If embalmer, include license number) <i>Sean Rollins</i>		
37 NAME AND COMPLETE ADDRESS OF FUNERAL FACILITY <b>Edwards Funeral Home, 201 N. 12th, Fort Smith, Arkansas 72901</b>					
38a DATE PROHOUNCED DEAD <b>Jan. 31, 2009</b>	38b TIME PROHOUNCED DEAD <b>4:47</b>	39 NAME AND TITLE OF PERSON PROHOUNCING DEATH (Print Name) <b>Phyllis Laguenet, RN</b>		40 WAS MEDICAL EXAMINER OR CORONER CONTACTED? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
41 CAUSE OF DEATH (Enter the cause of death - major injuries, or complications - that directly caused the death. DO NOT enter terminal events such as cardiac arrest, respiratory arrest, or ventilator withdrawal with out showing the etiology. DO NOT abbreviate. Enter only one cause on a line.)					
IMMEDIATE CAUSE <i>Pneumonia with Aspiration</i>				APPROPRIATE INTERVAL Onset to Death <i>16-18 days</i>	
UNDERLYING CAUSE <i>immobility</i>				<i>24 days</i>	
UNDERLYING CAUSE <i>pelvic fracture</i>				<i>61 days</i>	
UNDERLYING CAUSE <i>trauma (car fall in patient)</i>				<i>24 days</i>	
PART II - Enter other diagnostic conditions considered to exist but not resulting in the underlying cause given in PART I					
21a WAS AN AUTOPSY PERFORMED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				21b WERE AUTOPSY FINDINGS AVAILABLE TO COMPLETE THE CAUSE OF DEATH? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
22 MANNER OF DEATH <input type="checkbox"/> Natural <input checked="" type="checkbox"/> Accident <input type="checkbox"/> Suicide <input type="checkbox"/> Homicide <input type="checkbox"/> Pending Investigation <input type="checkbox"/> Could not be determined					
23 DID TOBACCO USE CONTRIBUTE TO DEATH? <input type="checkbox"/> Yes <input type="checkbox"/> Probably <input checked="" type="checkbox"/> No		24 IF FEMALE <input type="checkbox"/> Not pregnant within past year <input type="checkbox"/> Not pregnant but pregnant within 42 days of death <input type="checkbox"/> Unknown if pregnant within last year <input type="checkbox"/> Pregnant at time of death <input type="checkbox"/> Not pregnant but pregnant 43 days to 1 year before death			
25a DATE OF INJURY (Month, Day, Year) <b>7/11</b>	25b TIME OF INJURY <b>6:11</b>	25c PLACE OF INJURY (If a driver's injury, completion of report is required and must be attached) <b>Steelfield Assisted Living</b>	25d INJURY AT WORK? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
26 LOCALITY OF INJURY (Name of State, County, City, Town, ZIP Code) <b>2300 Flanna Oaks, Fort Smith, AR 72909</b>					
27 DESCRIBE HOW INJURY OCCURRED <i>Doc fell on patient, causing ht pelvic fracture</i>				28 IF TRANSPORTATION INVOLVED, SPECIFY <input type="checkbox"/> Driver / Operator <input type="checkbox"/> Passenger <input type="checkbox"/> Pedestrian <input type="checkbox"/> Other (Specify)	
29a CERTIFIER (Check only one) <input checked="" type="checkbox"/> Coroner / Physician - To the best of my knowledge, death occurred due to the cause(s) and manner stated. <input type="checkbox"/> Physician & Coroner / Physician - To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Medical Examiner - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Coroner - On the basis of examination, and/or investigation, in my opinion, death occurred at the time, date, and place, and due to the cause(s) and manner stated. <input type="checkbox"/> Hospice Registered Nurse - To the best of my knowledge, death occurred at the time, date, and place, and due to the cause(s) and manner stated.					
SIGNATURE <i>James Henry</i>		TITLE <b>MD</b>	DATE <b>2/11/09</b>	SIGNATURE <i>Christina Crowell</i>	
29b NAME AND COMPLETE MAILING ADDRESS OF PERSON SIGNING ITEM 29a (Print Name) <b>James Henry, MD 1500 Robin Ft Smith, AR 72908</b>				29c LICENSE # <b>C16617</b>	
29d TITLE OF REGISTRAR <b>Christina Crowell DR</b>				29e FOR REGISTRAR ONLY - DATE SIGNED <b>Feb 13, 2009</b>	

THIS IS TO CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE CERTIFICATE ON FILE IN THE ARKANSAS DEPARTMENT OF HEALTH



FEB 13 2009

*Michael A. Adams*  
Michael A. Adams  
State Registrar

**WARNING:** A REPRODUCTION OF THE EMBOSSED SEAL OF THE ARKANSAS DEPARTMENT OF HEALTH IS ILLEGAL IF IT IS NOT IDENTICAL TO THE ORIGINAL. DO NOT ACCEPT UNLESS THIS IS PRESENT. IT IS ILLEGAL TO ALTER OR COUNTERFEIT.



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