

Leaders in the Law 2024

TOP SETTLEMENTS 2023

#5 – \$15 MILLION

Estate of Jackson Kekula v. Boston Children's Hospital

Robert M. Higgins and Andrew C. Meyer Jr., Lubin & Meyer, Boston

In a tragic case involving the death of a 6-month-old, Andrew C. Meyer Jr. and Robert M. Higgins of Boston's Lubin & Meyer helped the parents recover \$15 million in a settlement reached in April 2023.

Born on Aug. 9, 2021, Jackson Kekula failed his car seat test prior to being discharged home due to apneic episodes while sitting upright. He went home in a car bed that was to be used until he passed his car seat test.

Kekula arrived at Boston Children's Hospital on Feb. 18, 2022, to undergo another car seat sleep study. He fell asleep about 9:35 p.m. on the bed and was moved to the car seat at 9:40 p.m. Monitors were placed on various parts of his body to document his brain activity, heart rate, respirations and oxygen saturations during the study.

By 9:48 p.m., his oxygen saturations had dropped into the low 80s, and by 9:50 they were in the 70s; his heart rate had dropped down into the 40s and his brain activity began to show abnormalities from a lack of oxygen.



ROBERT M. HIGGINS



ANDREW C. MEYER JR.

Although the providers recognized the abnormalities in his vital signs, they attributed them to a malfunction in the machinery. Over the next 30 minutes, as the child's breathing was abnormal and he was not receiving proper oxygen, the technologists proceeded to adjust his oxygen saturation monitoring and unplug and plug in the machine repeatedly. Neither technologist ever checked the child.

Around 10:25 p.m., the child was removed from his car seat and the technologists realized that he was in cardiac arrest. The code team spent 20 to 30 minutes attempting to revive him before getting his heart started again. He was transported to the ICU on life support.

An MRI showed that he had suffered devastating and irreversible brain damage from the lack of oxygen. After extensive discussions with physicians, his parents decided to remove life support after 12 days and he died in his mother's arms on March 2, 2022.

"This was a tremendously tragic case and a horrible situation for everyone – including the defendants," Meyer said.

The parties mediated the claim and the case settled for \$15 million shortly after mediation and before suit was filed, the result of a persuasive case and strong expert testimony necessary, Meyer noted.

"You can resolve a claim with a velvet glove and you don't always need the iron fist," Meyer explained. "We were able to work cooperatively with ... all the parties involved. It was incredibly important to not only get a positive result for our clients to get closure in this case, but also to have the hospital change its policies and procedures to make sure that nobody else gets harmed."