

# Medical Malpractice

A jury found a Loma Linda University Medical Center obstetrician waited too long to deliver Roman Balli. Today the 8-year-old must be given virtually all his food through a catheter in his abdomen.

From a distance, Roman Balli looks like any other 8-year-old boy. A closer look, however, reveals a different story.

Every night for eight hours, Balli is fed intravenously by his mother, receiving all his daily nutrition through a catheter in his abdomen that he tapes to his body when he goes to school.

Balli was born with gastroschisis, a congenital bowel defect that prevents him from digesting food.

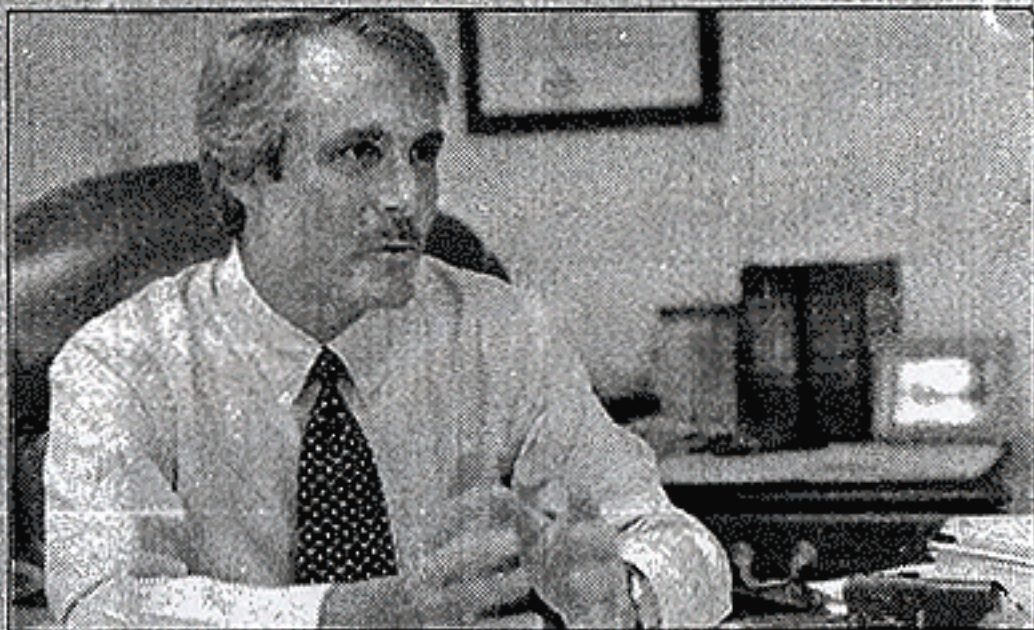
Last April, a San Bernardino Superior Court jury awarded the boy \$17.2 million because it found the obstetrician at Loma Linda University Medical Center waited too long to deliver Roman, causing the loss of most of his small intestine at birth. Had Balli been delivered earlier, the plaintiff's attorney argued, he could have been spared this lifelong condition.

The trial judge reduced the award to \$13.4 million, in accordance with MICRA, the Medical Injury Compensation Reform Act of 1975, which limits pain and suffering damages in medical malpractice cases to \$250,000. With an appeal pending, the case later settled for an undisclosed amount.

Gastroschisis causes a fetus' bowel to float freely in the amniotic fluid of the mother. Many medical experts believe that if doctors deliver the baby past 38 weeks of gestation, there is a greater likelihood that the bowel will twist, cutting off its own blood supply and leading to gangrene of the intestines.

In Balli's case, the hospital allowed him to go well past his due date — 41½ weeks to be exact — and most of his intestines had become gangrenous.

For the rest of his life, the boy needs to be fed



## \$17.2 Million

**Case:** *Roman Balli v. Loma Linda University Medical Center*, San Bernardino Superior Court, No. SCV 21631.

**Plaintiff's Attorney:** Russell S. Kussman, above, Kussman & Whitehill, Los Angeles.

**Defense Attorney:** John MacRill Jr., MacRill & Associates, Upland.

**Trial Judge:** Carl Davis.

**Date of Verdict:** April 8, 1998.

**Status:** Award reduced by statute to \$13.4 million; later settled for an undisclosed amount.

through a tube in his abdomen that carries fats, carbohydrates and proteins into his body.

"That's what keeps him alive," says his attorney, Russell Kussman of Los Angeles' Kussman & Whitehill,

who besides being a prominent medical malpractice lawyer is also a medical doctor, having practiced internal medicine before becoming an attorney. "If he doesn't get that, he's dead."

According to Kussman, it costs the family \$250,000 a year to care for the child, who finds it next to impossible to digest food normally.

"He can eat a couple of those little cheddar goldfish," Kussman says. "If he eats two a day it's a triumph for him. Half the time he throws them up."

After her son's birth, Balli's mother quit her job as a paralegal and attended nursing school, later becoming a registered nurse to care for her son. She takes him to the hospital every month or two due to various infections her son receives, Kussman says.

John MacRill Jr. of MacRill & Associates in Upland, who defended the hospital, says it was hard for a jury not to feel sorry for the boy. "It was one of those cases where it was really a tossup going in, but the sympathy was overwhelming," MacRill says. "It was a nice little boy and really a nice family."

A pivotal moment in the case, MacRill says, came when the judge allowed the plaintiff to demonstrate the intravenous feeding procedure in court.

"I had one eye on the jury and you should have seen the tears," he says. "When they did that demonstration, I thought, 'Oh boy.' You could just hear the adding machines."

Nobody knows what the life expectancy is for a child with gastroschisis, but a medical expert for the plaintiff testified there was no reason to believe the child couldn't have a normal life span.

—Tom Orewyler