

# Salt Lake Tribune, The (UT)

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## **Barton Law Firm Sued Over Free Heart Tests Law Firm Sued by Company Giving Screenings**

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Attorney Keith Barton's television advertisements promised free heart screenings to determine potential clients' entitlements to a piece of the \$3.75 billion fen-phen settlement.

For the thousands who responded, fearing the diet drug pulled from the market in 1997 had damaged their hearts,

it seemed a bargain. Such tests, depending on whether they are preliminary or full studies, cost between \$125 and \$1,850.

However, the company contracted to do those tests, Salt Lake City's Mobile Echocardiography Inc. (MEI), contends the exams turned out to be a bit too free. MEI alleges Barton has not paid the company what it is owed.

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MEI has filed a \$4.5 million claim in 3rd District Court against Barton and his law firm, Gregory, Barton & Swapp. The company awaits a decision by Judge Michael Burton on an April 8 motion for partial summary judgment that would award MEI nearly \$525,000 plus interest on payments determined past due.

Barton's legal counsel, Michael Spence, contends MEI already was paid in full.

"Gregory, Barton & Swapp has made several hundred thousand dollars in payment for many of the cardiograms," Spence said Friday. "What we are saying is we don't owe you any more."

MEI attorney James Magleby declined to comment on the case except to promise "there is a lot more to come" in unspecified courtroom revelations.

However, MEI does acknowledge being paid for "all full studies" it conducted for Barton between January and March 2000.

What remains in dispute, it says, is money owed for a new round of screenings beginning in August 2000. MEI claims Barton's ads were paying off with a flow of potential new clients seeking compensation from drugmaker Wyeth for possible heart valve damage from fen-phen.

In September 2001, "defendants asked MEI to increase the number of echocardiogram[s] . . . because of the large number of clients [Barton's firm] was obtaining through advertisements" offering free testing, the lawsuit states.

MEI further alleges that Barton and his firm asked MEI to buy additional equipment, add personnel and expand its hours to handle the increased workload. The cost of one additional echocardiogram machine was \$123,295, MEI says.

The company also claimed -- and included a copy of the document in its filings bearing Barton's signature -- that it was promised \$125 per initial screening, another \$125 per day to partially cover a technician's salary, and \$1,850 for each of the more extensive "full study" screenings requested.

From August 2000 through April 2002, MEI claims it conducted 8,000 initial screenings and 2,500 full studies.

The company says Barton's firm later asked for rescreenings of some of those tests at no additional cost to the firm.

MEI contends that when it balked, insisting on additional compensation for further work, Barton's firm countered by refusing further payments for tests already completed.

In its counterclaim, Barton and his firm say they learned from cardiologists hired to interpret MEI's full studies that the screenings contained inadequate data and could not be used in court.

MEI disputes that claim, saying its screenings met industry standards.

Gregory, Barton & Swapp says it offered to pay the costs for rescreenings and even buy additional testing equipment to "assist MEI in getting the new studies done on an expedited basis."

According to Barton and his firm, MEI refused the offer and terminated its contract with the defendants.

Barton, the counterclaim states, then was forced to pay more than \$500,000 to another company to conduct about 3,000 duplicate studies.

MEI insists, however, that Barton never offered to pay for re-examinations or new equipment, instead demanding MEI swallow those costs.

Further, by allegedly breaching their agreement, it was Barton and his firm that "terminated the relationship with MEI," the company argues.

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