

STARTER *DONE* ✓ **BRING ON!** **THE MAIN!** !

This small-town American lawyer took on the big tobacco barons and won \$240bn damages. Now his knife is out for the 'venal and corrupt' food giants that claim their products are healthy and natural when, in fact, they're loaded with salt, fat and sugar. **John Arlidge** investigates

Photographs: **Jez Coulson**





LOOKING DAGGERS
Don Barrett sticks it to the all-American diet. 'Big food is poisoning us for profit,' he says

Few of us have heard of Don Barrett. Even fewer would recognise him if he walked past in the street, his black labrador, Sam, by his side. But the ruddy-faced 68-year-old has changed most of our lives. He is the reason most of us do not smoke, have quit or, at least, tried to quit. He is the reason our children probably won't smoke. And now he might be about to change the way many of us eat, too.

Barrett is the small-town lawyer from Mississippi who took on big tobacco — and won. He sued the four giant American cigarette manufacturers for causing cancer and secured \$240bn (£157bn) in damages. Since the court hearings, which were portrayed in *The Insider*, the film starring Russell Crowe and Al Pacino, governments have introduced tougher controls on the labelling, advertising and sale of cigarettes, and the number of people who smoke has been falling steadily ever since.

For most lawyers, one 14-year “David and Goliath” battle that almost bankrupted them and imperilled their family would be enough. Barrett had to mortgage his house to fund the tobacco litigation and bought his wife a handgun after she and their three children received anonymous death threats. But Barrett insists: “My country ass ain’t done yet.”

He now has another, even richer, more powerful target in sight: big food. “Food corporations are poisoning the American people for profit. They’re venal and corrupt and must be stopped. I’m gonna stop them. I’m gonna kill ‘em,” he says, sitting behind his desk in Lexington, a steamy four-hour drive north through the Mississippi delta from New Orleans.

Barrett, working with a team of 35 top litigators across the US, has filed more than 30 lawsuits against the biggest food-makers and supermarkets that sell their own-brand food. They include Coca-Cola, PepsiCo, Nestlé, Del Monte, Hershey, Mars, Kraft, Procter & Gamble, Unilever, Costco, 7-Eleven, Whole Foods and Trader Joe’s. Together, these firms make and sell more than a trillion dollars’ worth of food and drink every year. Barrett accuses them of knowingly misbranding their products as healthier than they really are to boost sales. His case is the biggest threat to their profits, and their image they have faced. Stricter food labelling laws

here mean Barrett is not pursuing the firms in Britain, where they also sell billions of pounds’ worth of food.

Politicians, lawyers and nutritionists have been trying to make consumers eat more healthily for years. They have imposed “sin taxes” on fat, salt and fizzy pop. They have tried to ban “deceptive” food advertising. Almost every attempt has failed, either because the courts declared it illegal or it proved unworkable. The latest example is New York mayor Michael Bloomberg’s proposal to ban the sale of 16oz-plus servings of sugary drinks in the city. The courts threw it out in March. The judge ruled it was discriminatory because it applied to certain kinds of sweet drinks, notably sodas, but not others — milkshakes, for instance.

Barrett thinks he has come up with the magic formula to succeed — and win the kind of damages that will make the \$240bn tobacco settlement look like pocket change. “The beauty of our case is it is so simple,” he grins.

Barrett is not trying to prove that the big food firms’ products harm our health. Nor is he trying to prove that their advertising is



‘BIG FOOD FIRMS POISON PEOPLE FOR PROFIT. I’M GONNA KILL ‘EM’

deceptive. He is simply trying to prove that what they say about their own products is untruthful and illegal. He says he has incontrovertible evidence that manufacturers disguise the true amount of sugar and fat in their products, make spurious claims that ingredients are “all natural”, and, in some cases, lie about the number of calories a product contains.

“The law is clear. Food labels must be honest. But many are deceptive at best, and downright lies at worst,” Barrett says. “All the evidence we need to prove our case is



on — or rather not on — the label.”

Sitting in his office opposite the courthouse in Lexington town square, where his tobacco crusade began a generation ago, he explains that, under US Food and Drug Administration (FDA) rules, food firms must accurately record the ingredients in their products on the packet. If not, the product is illegal and cannot be sold. He says the big food companies must withdraw the thousands of products that are mislabelled and reimburse consumers who have bought them in the previous four years — the time limit the US courts impose. The firms must pay additional damages to take account of any harm done to consumers’ health. Finally, they must introduce new, accurate labels. Most of Barrett’s cases have been filed in California, where consumer protection laws tend to favour plaintiffs.

How big could the damages be if he wins?

“Way bigger than tobacco.” Why? “Because everybody eats but not everybody smokes.”

He points to a single brand, Lay’s crisps, made by PepsiCo. “PepsiCo makes \$13bn a year selling Lay’s and other snacks. We argue Lay’s products are mislabelled. Multiply \$13bn by four and you get \$52bn. Do the same for lots of other makes of lots of other types of food and, well, you do the math.” Any damages would be paid into the court, which would make awards to consumers with legitimate claims.

Publicly, the big food firms reject Barrett’s litigation as “frivolous, vexatious and groundless”. They insist their food labels “comply with all regulatory requirements”.



They deny that they mislead consumers and accuse Barrett of trying to cash in on his “celebrity lawyer” profile. Barrett is very well known in America and earned about \$100m from the tobacco settlement. He will earn more than that if he wins the food case.

One leading food executive, speaking privately because his is one of the firms Barrett is suing, told *The Sunday Times*: “Barrett is suing for money. If he succeeds, he’ll win cash for himself, and companies like mine will have to put up prices to pay the damages. That’ll hurt the consumer. Who are you going to trust: a greedy trial lawyer or a firm like mine that makes good food that consumers love?”

But behind the scenes, there are signs that the corporations are worried. One company Barrett has sued, SunSweet, which makes and sells dried fruit in California, has already agreed to change its labels, removing references to antioxidants before the case could go to court. Coca-Cola, the world’s biggest drinks company, said last month it would put calorie counts on the front of its packaging around the world, one of a number of new labelling initiatives. PepsiCo is changing the labels on its food. Some bags of Lay’s crisps no longer boast they contain “0 grams Trans Fat”. PepsiCo says: “We are confident that the labelling on our packaging complies with all regulatory requirements.”

Judges in the US have rejected the big food firms’ motions to dismiss Barrett’s lawsuits. The first cases are due to go to trial later this year. In court, Barrett will argue that companies hoodwink consumers into buying food they think is good for them, but, in fact,

is not. Key evidence centres on what Barrett calls “hidden sugar”. The best example, he says, is Chobani yoghurt, one of the most popular brands of yoghurt in America, with \$1bn a year in sales. Chobani, which is expanding into Britain, is marketed as healthy food. “Real... crafted, authentic and simple,” its ads say. But many of its products contain a large amount of sugar. Not that you would know this by looking at the label. In the US, the word “sugar” does not appear on the list of ingredients. But there is something called “evaporated cane juice”.

“That sounds real healthy and natural, doesn’t it?” says Barrett. “But anyone from the South can tell you it isn’t. Evaporated cane juice is just sugar. The label is deliberately misleading. The mom or dad who’s trying to buy something healthy for their child, or trying to avoid giving sugar to a diabetic child, might read that label and think the yoghurt is sugar-free. In fact, it’s like eating ice cream.”

Chobani acknowledges its products contain a lot of sugar, but dismisses Barrett’s lawsuit as “frivolous” and “without merit”. Carole Pucik, its spokeswoman, says: “We fully stand behind our products and are committed to bringing consumers the highest-quality products.” The words “evaporated cane juice” do not appear on the pots Chobani sells in Britain — the sugar content is labelled “cane sugar”.

What other examples of food mislabelling are there? “Come, I’ll show you,” Barrett says, grabbing the keys to his Lincoln Navigator. There’s only one supermarket in Lexington, a few miles out of town opposite the Sonic drive-thru burger joint on the road to Durant. Most supermarket owners would shudder at

the thought of a lawyer picking his way through the aisles, looking for illegal food, but Barrett knows the manager and, by the reaction on their faces when he walks in, most of the checkout ladies, too. The aisles have become an extension of his office.

Barrett picks out products made by the companies he is suing. First, a large packet of potato crisps. “Look! It says ‘0 grams Trans Fat’ in big letters on the front.” He turns the packet over and studies the small print. “It has fat and saturated fat in every serving. The FDA rules say you cannot say a product is low in trans fats if it contains disqualifying amounts of other fats. This product is illegal.”

He plucks a packet of savoury snacks off the shelves. “This is also illegal.” Why? “It says, ‘Made with all natural ingredients. No artificial flavours’ on the front but, turn to the label on the back and, look, it’s full of preservatives and flavouring. It’s baloney.” He picks up a can of soda. “It says it has 140 calories on the label. We know the real figure is 180. It’s a lie.”

Among other “tricks” Barrett says the food firms use is sticking “Refrigerate after opening” labels on products that have so many preservatives they do not need to be kept in the fridge. “They want consumers to think the product is fresher than it really is. It’s what the cigarette companies did when they started labelling their products ‘Mild’. The suggestion was they were better for you when, in fact, they still caused cancer. That kind of mislabelling fools people — and kills people.”

At times, Barrett sounds like the aggressive, grandstanding trial lawyer that big food likes to caricature him as. He calls his opponents “sons of bitches” and dismisses their arguments as “crap”. But he does not look like a sharp-suited, fast-talking attorney motivated by dirty cash. For a start, his suit is anything but sharp and there’s a big dark stain on his tie. Spend a day or two with him travelling around the Bible Belt and you get the feeling his battles are not about notoriety or money, they’re personal. “I do what I do because I live in Lexington and grew up around the kind of people who live here. If you had, you probably would too.”

Holmes County, where Lexington is, is the poorest county in the poorest state in America. Those who have a job earn about \$10 an hour. Those who don’t eke out a living on benefits. The fancy white folks left Lexington years ago to live in Jackson, a large town one hour’s drive away. Today, 85% of the town’s 2,000 population is black. But Barrett and ➤➤➤



his wife, Nancy, and their family stayed, keeping such mixed company that locals say he “votes with the niggers”. They mean it as a compliment. Ask him why he remains when, after the tobacco settlement, he could move to the Caribbean and never do another day’s work, and he says: “The Lord put me in Lexington for a reason.”

That reason turned out to be a man called Nathan Horton. He was a carpenter who used to work on Barrett’s farm and fished in his lake. The two men became friends. When Horton contracted lung cancer and his doctor told him cigarettes were to blame, he asked Barrett if he could sue the tobacco companies. Barrett said he would look into it.

So began the longest, dirtiest legal battle in modern history. Over 14 years, during which Horton died, Barrett uncovered “smoking gun” evidence that proved the big tobacco firms knew nicotine was addictive and smoking caused cancer, but had covered up the evidence. Faced with the devastating revelations and the prospect of almost endless litigation and limitless pay-outs, the big four manufacturers, Philip Morris, R J Reynolds, Brown & Williamson and Lorillard, settled in 1998. They agreed to pay an initial \$240bn in damages with more to follow. They are still paying out.

Like the tobacco case, the trigger for Barrett’s latest crusade is personal. “In the past 20 years, I’ve seen people I know, friends of mine, get fatter and get diabetes.” American government figures show that Mississippi has become the fattest state in the fattest nation on Earth. “I knew that my friends hadn’t suddenly become lazy gluttons overnight. There had to be another cause: diet.”

In recent decades, the amount of fat and sugar in many foods on sale in America has increased sharply. Official figures show the “average” American now eats three times more cheese a day than in the 1970s, and 22 teaspoons of sugar — double the recommended amount. None of this comes from the shakers on the table or from freshly grated parmesan. It’s in processed food. The effect has been dramatic. Two-thirds of American adults are overweight and some 36% of adults and 17% of children are obese. If current trends continue, nearly half of American adults could be obese by 2030. Some 26m Americans are afflicted by type-2 diabetes. Another 79m have pre-diabetes. Obesity and diabetes kill 300,000 Americans a year, and cost \$300bn to treat.

We in Britain have no reason to scoff



SMOKE ALARM

Russell Crowe in *The Insider*, the film that tells the story of how Barrett took on big tobacco and won

they don’t, sales will fall, and Wall Street will eat them alive. “Making money and delivering value for shareholders are wonderful. That doesn’t mean companies can lie, cheat, steal and violate the law.”

So, he believes the executives who create an abundance of cheap,

tasty food for busy consumers are evil geniuses who spend every waking hour trying to poison us? Barrett pauses. “The bosses of big food are probably not bad people personally. But they excuse the consequences of what their firms do by telling themselves, ‘I’m providing shareholder value. That’s all I have to think about.’”

What about the money? He may not look a million dollars but he clearly likes a bit of cash. He has holiday homes in Aspen and Florida, a large fishing boat and a private jet, and will be able to buy plenty more toys if he wins damages from big food. Far from being a legal and moral crusader guided by God, isn’t he just a grubby serial ambulance chaser?

“I don’t need this case. I’ve worked mighty hard. I’m rich. Even if I weren’t, what I do is a noble calling. By taking on and beating big tobacco, I and the other lawyers I work with have helped save countless millions of lives, and we hope to do the same with food.”

OK, Mister Smarty Southern Lawyer pants, what’s in your fridge? Do you practise what you preach? You look a bit lardy yourself, you know. How do we know you aren’t scoffing your way through ready meals every night because they taste too good? “You wanna look in my kitchen right now?” he asks.

A 10-minute ride in the Navigator later, and Barrett opens his obese American-style fridge. It is disappointingly free of processed food. Even the crackers are Nancy’s finest home-made savoury biscuits, and there are no fizzy drinks. “I used to drink regular Coke but I got rid of it when I started the research on the food case. I really miss it as a chaser with bourbon. Whiskey is good for you, you know.”

But what’s this? Ha! In the cupboard there’s a packet of microwave popcorn. Has he read the label? Does he know what’s in it? “No. And don’t even tell me. I don’t want to know what’s in that stuff. It tastes so good, I don’t want to give it up.” Even for the scourge of corporate America, some foods are too good to chew and too good to sue ■

at these statistics. The latest Department of Health figures confirm that more than 60% of adults are overweight, and 26% of adults and 16% of children are obese.

Barrett’s mastery of food law and public health issues is impressive, but his case begs serious questions — and that’s before lawyers for the big food firms get their teeth into his claims when the cases come to trial. If what big food has been doing for so long is illegal, how come nobody has noticed and bothered to tackle the problem before now? “Why did nobody take on big tobacco earlier?” he shrugs.

Why would food companies mislabel products? “Why wouldn’t they? It’s good for business. Consumers are more likely to buy a product if it appears to be healthy, while manufacturers can charge a higher price for it.”

Perhaps. But isn’t it a bit over the top to say that food firms are killing up to 300,000 people a year? Food isn’t tobacco — a can of red Coke is nowhere near as harmful as a packet of Marlboro red. “Obesity and diabetes are killers. Look at the figures.” US government statistics show that four of the top 10 fatal diseases in America — stroke, diabetes, cancer and heart disease — are linked to diet.

Barrett adds that when consumers are given accurate information, they change their eating habits. Last year, restaurants across America introduced calorie counts on their menus in response to new laws. One of America’s largest chains, Panera Bread, a sandwich store, reports that 20% of customers now order lower-calorie items. Another, Chili’s Grill & Bar, says sales of items containing less than 675 calories have increased. “Labelling matters,” says Barrett. Anyone in Britain who has bought a beef-based ready meal that turned out to be mainly horse meat would agree.

But what about the business argument? The first duty of the chief executive of any firm is to maximise profits. Surely food bosses are right to do everything they can, including sexing up the labels a bit, to make money? If