AFC ENTERPRISES INC

FORM 8-K
(Current report filing)

Filed 11/29/06 for the Period Ending 11/28/06

Address	5555 GLENRIDGE CONNECTOR, NE, SUITE 300 ATLANTA, GA 30342
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported):
November 28, 2006

AFC Enterprises, Inc.
(Exact name of registrant as specified in its charter)

Minnesota	000-32369	58-2016606
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification Number)

5555 Glenridge Connector, NE, Suite 300, Atlanta, Georgia	30342
(Address of principal executive offices)	(Zip Code)

Registrant's telephone number, including area code: (404) 459-4450

Not applicable
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- ☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- ☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- ☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- ☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01. Entry into a Material Definitive Agreement.

The description of the Indemnification Agreements in Item 5.02 below is incorporated into this Item 1.01 by reference.

Item 5.02. Departure of Directors or Certain Officers; Election of Directors; Appointment of Certain Officers; Compensatory Arrangements of Certain Officers.

On November 28, 2006, the Company announced the appointment of John M. Cranor and Cheryl A. Bachelder to its Board of Directors. Mr. Cranor and Ms. Bachelder will also serve as members of the Board's Corporate Governance and Nominating Committee and People Services (Compensation) Committee.

Upon their appointment to the Board, Mr. Cranor and Ms. Bachelder became entitled to a prorated portion of the outside directors' compensation awarded pursuant to the compensation package for outside directors disclosed in the Company's Current Report on Form 8-K dated August 10, 2006.

In connection with their appointment to the Board, Mr. Cranor and Ms. Bachelder entered into the Company's standard indemnification agreement for directors (the "Indemnification Agreements"). The Indemnification Agreements for Mr. Cranor and Ms. Bachelder are attached to this Current Report on Form 8-K as Exhibits 10.1 and 10.2, respectively and are incorporated herein by reference.

A copy of the Company's press release is attached to this Current Report on Form 8-K as Exhibit 99.1 and is incorporated herein by reference.

Section 9—Financial Statements and Exhibits

Item 9.01. Financial Statements and Exhibits.

(d) Exhibits.

10.1	Indemnification Agreement by and between the Company and John M. Cranor dated November 28, 2006.
10.2	Indemnification Agreement by and between the Company and Cheryl A. Bachelder dated November 28, 2006.
99.1	Press Release dated November 28, 2006.

Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

AFC ENTERPRISES, INC.

Date: November 29, 2006

By: /s/ Harold M. Cohen

Harold M. Cohen
Senior Vice President, General Counsel and
Corporate Secretary

EXHIBIT INDEX

10.1	Indemnification Agreement by and between the Company and John M. Cranor dated November 28, 2006.
10.2	Indemnification Agreement by and between the Company and Cheryl A. Bachelder dated November 28, 2006.
99.1	Press Release dated November 28, 2006.

Exhibit 10.1

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT, dated as of November 28, 2006, is made by and between AFC Enterprises, Inc., a Minnesota corporation (the "Company"), and John M. Cranor, III, a director of the Company ("Director").

WHEREAS, Director is a member of the Board of Directors of the Company; and

WHEREAS, it will be difficult to retain directors of the Company unless such directors are adequately indemnified against liabilities incurred and claims made in performance of their duties as directors of the Company; and

WHEREAS, it is in the best interests of the Company to retain such directors by providing adequate indemnification by means of indemnification agreements with individual directors.

NOW, THEREFORE, in consideration of Director's continued service as a director of the Company, and as an inducement to Director to continue to serve as a director of the Company, the Company and Director agree as follows:

1. Indemnification . The Company agrees to indemnify and hold Director harmless from and against any claims, liabilities, damages, judgments, penalties, fines or expenses of any type whatsoever incurred by Director in or arising out of the status, capacities or activities of Director as a director of the Company to the maximum extent permitted under Minnesota Statutes, Section 302A.521 (attached hereto as Exhibit A) as in effect on the date hereof.

2. Advances of Expenses . Subject to Director's execution of a written affirmation, satisfactory to the Company, of the Director's good faith belief that the criteria for indemnification have been satisfied and to repay all amounts advanced by the Company if it is ultimately determined that the criteria for indemnification have not been satisfied, the Company shall advance all expenses incurred by Director in connection with the investigation, defense, settlement or appeal of any proceeding, action or investigation to which Director is a party or is threatened to be made a party arising out of the status, capacities or activities of Director as a director of the Company to the maximum extent permitted under Minnesota Statutes, Section 302.521, subd. 3 as in effect on the date of this Agreement upon the determination by the Company that the facts then known to those making the determination would not preclude indemnification under Section 502A.521, subd. 6 within 60 days after receipt of said written affirmation. Director shall have a reasonable right to appear in person and to be represented by counsel.

3. Other Rights of Directors . The right of Director to indemnification or advance of expenses pursuant to this Agreement shall not be exclusive of other rights Director may have (i) under applicable law, (ii) pursuant to other agreements between the Company and Director or the Company's Articles of Incorporation or Bylaws, or (iii) pursuant to any agreement with a third party (by way of insurance, indemnification or otherwise).

4. Absolute Right to Indemnification and Advances of Expenses . The Company agrees that it shall not, and the Company hereby waives all rights that it has or may have to, refuse to indemnify or advance expenses, or withhold payment of amounts for which Director is indemnified hereunder, or for advance of expenses to Director, based on any breach or alleged breach of any of the provisions of this Agreement by Director or for any other reason whatsoever. In the event Director is required to bring any action to enforce Director's rights or to collect monies due to Director under this Agreement, and is successful in such action, the Company shall reimburse Director for all of Director's legal fees and expenses in bringing and pursuing such action.

5. Amendments to Minnesota Statutes or Company's Articles of Incorporation or Bylaws . The Company represents that its Bylaws provide for indemnification of Director to the maximum extent permitted by Minnesota Statutes, Section 302A.521 as in effect on the date hereof and to the maximum extent required by this Agreement. The Company shall not amend its Articles of Incorporation or Bylaws to reduce or eliminate the Director's right to indemnification or advances provided for under this Agreement. Any amendments to the Articles of Incorporation or Bylaws of the Company made subsequent to the date of this Agreement which reduce or eliminate rights of persons entitled to indemnification or advances under such Articles of Incorporation or Bylaws shall not limit the rights of Director pursuant to this Agreement. If the Minnesota Statutes, the Articles of Incorporation or the Bylaws of the Company are amended so as to provide for greater indemnification rights or benefits, and Director shall be entitled to such greater rights or benefits, and Director shall be entitled to such greater rights and benefits immediately upon such amendment. Subsequent amendments to the Minnesota Statutes or other applicable law shall in no way reduce Director's rights under this Agreement.

6. Maintenance of Insurance . The Company represents that it presently has in force and effect directors and officers insurance under a Directors' and Officers' Liability Insurance Policies including Company Reimbursement issued by XL Specialty Insurance Company. (Policy No. ELU088117-06) covering certain liabilities which may be incurred by its officers and directors. The Company may maintain in effect, for the benefit of Director, directors' and officers' insurance providing such coverage as may, from time to time, be determined by the Board of Directors of the Company, in their absolute discretion.

7. Notification . Promptly after receipt by Director of the Company of any notice or document respecting the commencement of any action, suit, proceeding or investigation naming or involving Director and relating to any matter concerning which Director may be entitled to indemnification or advances pursuant to this Agreement, the party receiving notice will notify the other of the receipt of same, but the failure by Director to so notify the Company shall not relieve the Company from any obligation under this Agreement or otherwise.

8. Amendment . This Agreement may be amended at any time by written instrument executed by the Company and Director.

9. Notices. All notices and other communications between the parties with respect to this Agreement must be made in writing and shall be deemed to have been fully delivered as of the date on which they are hand delivered or deposited in the United States mail for delivery by registered or certified mail, postage and fees prepaid.

10. Binding Effect. Due to the personal nature of the services to be rendered by Director, Director may not assign this Agreement. Subject to the foregoing, the provisions of this Agreement are binding upon and inure to the benefit of (i) Director and Director's respective heirs, legal representatives and administrators, and (ii) the Company and its successors, transferees and assigns.

11. Survival. The obligations of the Company to Director as provided in this Agreement shall survive and continue after Director has ceased to be a director of the Company.

12. Validity. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.

13. Arbitration. Any dispute or controversy arising under or in connection with this Agreement shall be discussed between the parties in a good faith effort to arrive at a mutual settlement of any such controversy. If, notwithstanding the parties' good faith efforts, a dispute remains unresolved for a period of 45 days after initial notice from one party to the other of the dispute, the parties shall submit such dispute to arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award may be entered in any court having jurisdiction over the controversy. The costs of the proceeding shall be paid by the Company. Unless otherwise agreed upon, the place of arbitration proceedings shall be Fulton County, Georgia.

14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

AFC ENTERPRISES, INC.

By: /s/ Kenneth L. Keymer
Kenneth L. Keymer, Chief Executive Officer

/s/ John M. Cranor, III
John M. Cranor, III, Director

Exhibit 10.2

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT, dated as of November 28, 2006, is made by and between AFC Enterprises, Inc., a Minnesota corporation (the "Company"), and Cheryl A. Bachelder, a director of the Company ("Director").

WHEREAS, Director is a member of the Board of Directors of the Company; and

WHEREAS, it will be difficult to retain directors of the Company unless such directors are adequately indemnified against liabilities incurred and claims made in performance of their duties as directors of the Company; and

WHEREAS, it is in the best interests of the Company to retain such directors by providing adequate indemnification by means of indemnification agreements with individual directors.

NOW, THEREFORE, in consideration of Director's continued service as a director of the Company, and as an inducement to Director to continue to serve as a director of the Company, the Company and Director agree as follows:

1. Indemnification . The Company agrees to indemnify and hold Director harmless from and against any claims, liabilities, damages, judgments, penalties, fines or expenses of any type whatsoever incurred by Director in or arising out of the status, capacities or activities of Director as a director of the Company to the maximum extent permitted under Minnesota Statutes, Section 302A.521 (attached hereto as Exhibit A) as in effect on the date hereof.

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7. Notification . Promptly after receipt by Director of the Company of any notice or document respecting the commencement of any action, suit, proceeding or investigation naming or involving Director and relating to any matter concerning which Director may be entitled to indemnification or advances pursuant to this Agreement, the party receiving notice will notify the other of the receipt of same, but the failure by Director to so notify the Company shall not relieve the Company from any obligation under this Agreement or otherwise.

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14. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first above written.

AFC ENTERPRISES, INC.

By: /s/ Kenneth L. Keymer

Kenneth L. Keymer, Chief Executive Officer

/s/ Cheryl A. Bachelder

Cheryl A. Bachelder, Director

Exhibit 99.1

AFC ENTERPRISES

Popeyes

NEWS RELEASE

AFC ENTERPRISES APPOINTS JOHN M. CRANOR and CHERYL A. BACHELDER TO BOARD OF DIRECTORS

Atlanta, Georgia, November 28, 2006 — AFC Enterprises, Inc. (NASDAQ:AFCE), the franchisor and operator of Popeyes ® Chicken & Biscuits, today announced the appointment of John M. Cranor and Cheryl A. Bachelder to its Board of Directors. Mr. Cranor and Ms. Bachelder will also serve as members of the Board's Corporate Governance and Compensation Committees.

Mr. Cranor previously served as Chairman, President and Chief Executive Officer of Long John Silver's Restaurants, Inc., a position he held from 1996-1999. Prior to that, Mr. Cranor was President and Chief Executive Officer of KFC Corporation from 1989-1994. Mr. Cranor has more than 30-years of management experience in the food service and retail industries including senior executive positions with Pepsi-Cola North America, Taco Bell Corporation, Wilson Sporting Goods, and Frito-Lay Company.

Since 2003, Mr. Cranor has served as the President and Chief Executive Officer of the New College Foundation, affiliated with New College of Florida in Sarasota. Mr. Cranor previously served on the Board of Directors for Quick Chek Stores, Inc., Capital Holding, National City Bank, and Providian Financial Corporation. Mr. Cranor holds a Bachelor's of Arts degree from New College of Florida and a Master's of Business Administration from Harvard University.

Ms. Bachelder served as the President and Chief Concept Officer of KFC Corporation from 2001-2003. From 1995-2000, Ms. Bachelder was Vice President, Marketing and Product Development for Domino's Pizza, Inc. She began her career at Procter & Gamble in brand management and rose to leadership roles at The Gillette Company and RJR Nabisco Inc.

Ms. Bachelder currently serves as a member of the True Value Company Board of Directors. She also sits on the Board of Overseers for the Tobias Center for Leadership Excellence at Indiana University. Ms. Bachelder holds a Bachelor's of Science and a Master's of Business Administration from the Kelley School at Indiana University.

"John and Cheryl will be great additions to our Board," said Ken Keymer, Chief Executive Officer and President. "Both of them bring strong leadership skills coupled with excellent operational and marketing experience from the quick-serve restaurant sector and food industry. Their expertise in our quick service sector will be of great benefit to our growth. We look forward to their contributions."

Corporate Profile

AFC Enterprises, Inc. is the franchisor and operator of Popeyes ® Chicken & Biscuits, the world's second-largest quick-service chicken concept based on number of units. As of October 1, 2006, Popeyes had 1,845 restaurants in the United States, Puerto Rico, Guam and 24 foreign countries. AFC has a primary objective to be the world's Franchisor of Choice ® by offering investment opportunities in its Popeyes Chicken & Biscuits brand and providing exceptional franchisee support systems and services. AFC Enterprises can be found on the World Wide Web at www.afce.com .

- more -

NEWS RELEASE

AFC Contact Information

Investor inquiries:

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(404) 459-4487 or investor.relations@afce.com

Media inquiries:

Alicia Thompson, Vice President, Popeyes Communications & Public Relations

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Forward-Looking Statement: Certain statements in this release, and other written or oral statements made by or on behalf of AFC or its brand are “forward-looking statements” within the meaning of the federal securities laws. Statements regarding future events and developments and our future performance, as well as management’s current expectations, beliefs, plans, estimates or projections relating to the future, are forward-looking statements within the meaning of these laws. These forward-looking statements are subject to a number of risks and uncertainties. Among the important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are: competition from other restaurant concepts and food retailers, the loss of franchisees and other business partners, labor shortages or increased labor costs, increased costs of our principal food products, changes in consumer preferences and demographic trends, as well as concerns about health or food quality, instances of avian flu or other food-borne illnesses, the need to continue to improve our internal controls, adverse effects on operations from Hurricane Katrina, the Company’s ability to recover related losses from its insurers and the economic impact on consumer spending in markets affected by Katrina, the loss of senior management and the inability to attract and retain additional qualified management personnel, limitations on our business under our 2005 Credit Facility, failure of our franchisees, a decline in the number of franchised units, a decline in our ability to franchise new units, slowed expansion into new markets, unexpected and adverse fluctuations in quarterly results, increased government regulation, adverse effects of regulatory actions arising in connection with the restatement of our previously issued financial statements, effects of increased gasoline prices, general economic conditions, supply and delivery shortages or interruptions, currency, economic and political factors that affect our international operations, inadequate protection of our intellectual property and liabilities for environmental contamination and the other risk factors detailed in our 2005 Annual Report on Form 10-K and other documents we file with the Securities and Exchange Commission. Therefore, you should not place undue reliance on any forward-looking statements.

- End -