

# AFC ENTERPRISES INC

## FORM 8-K (Current report filing)

Filed 09/06/13 for the Period Ending 09/05/13

Address	400 PERIMETER CENTER TERRACE, SUITE 1000 ATLANTA, GA 30346
Telephone	4044594450
CIK	0001041379
Symbol	AFCE
SIC Code	5812 - Eating Places
Industry	Restaurants
Sector	Services
Fiscal Year	12/30

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, DC 20549**

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**FORM 8-K**

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**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

**Date of report (Date of earliest event reported) September 5, 2013**

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**AFC Enterprises, Inc.**

(Exact Name of Registrant as Specified in Its Charter)

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**Minnesota**

(State or Other Jurisdiction of Incorporation)

**000-32369**  
(Commission  
File Number)

**58-2016606**  
(IRS Employer  
Identification No.)

**400 Perimeter Center Terrace, Suite 1000,  
Atlanta, Georgia**  
(Address of Principal Executive Offices)

**30346**  
(Zip Code)

**(404) 459-4450**

(Registrant's Telephone Number, Including Area Code)

**Not applicable**

(Former Name or Former Address, if Changed Since Last Report)

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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 ( *see* General Instruction A.2. below):

- 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))
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**Item 1.01. Entry into a Material Definitive Agreement.**

The description of the Indemnification Agreement 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 September 5, 2013, the Board of Directors (the “Board”) of AFC Enterprises, Inc. (the “Company”) appointed Joel K. Manby to the Board.

Mr. Manby will be entitled to compensation in accordance with the Company’s previously-disclosed outside director compensation package.

In connection with his appointment to the Board, Mr. Manby entered into the Company’s standard indemnification agreement for directors (the “Indemnification Agreement”). The Indemnification Agreement is attached to this Current Report on Form 8-K as Exhibit 10.1 and is incorporated herein by reference.

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

**Item 9.01. Financial Statements and Exhibits.**

(d) Exhibits.

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|------|---|
| 10.1 | Indemnification Agreement by and between the Company and Joel K. Manby dated September 5, 2013. |
| 99.1 | Press release, dated September 5, 2013.   |

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**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: September 5, 2013

By: /s/ Harold M. Cohen

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

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**EXHIBIT INDEX**

<u>Exhibit Number</u>	<u>Description</u>
10.1	Indemnification Agreement by and between the Company and Joel K. Manby dated September 5, 2013.
99.1	Press Release, dated September 5, 2013.

**INDEMNIFICATION AGREEMENT**

THIS INDEMNIFICATION AGREEMENT, dated as of September 5, 2013, is made by and between AFC Enterprises, Inc., a Minnesota corporation (the "Company"), and Joel K. Manby, 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 directors' and officers' liability insurance policies 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 its 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/ Cheryl A. Bachelder  
Cheryl A. Bachelder, Chief Executive Officer

/s/ Joel K. Manby  
Joel K. Manby, Director

September 5, 2013

### **AFC Enterprises Appoints Joel K. Manby to Board of Directors**

ATLANTA—(BUSINESS WIRE)— AFC Enterprises, Inc. (NASDAQ:AFCE), the franchisor and operator of Popeyes® restaurants, today announced the appointment of Joel K. Manby to its Board of Directors.

Mr. Manby is President and Chief Executive Officer of Herschend Family Entertainment Corporation (HFE), the largest family-owned attractions company in the U.S. with such popular brands as Dollywood, Silver Dollar City, Stone Mountain Park, Newport Aquarium, Adventure Aquarium, and Pirate’s Voyage Dinner Theater. He has served in that capacity since 2003. One of the hallmarks of Mr. Manby’s leadership has been his shaping of the HFE culture, driven by his deep understanding of how operational and employee issues affect customer experience, and therefore business results. Under Mr. Manby’s leadership, HFE’s profitability and customer satisfaction scores have risen dramatically. To reinforce the culture, Mr. Manby formalized the tenets of his management style in his book *Love Works*.

Prior to HFE, Mr. Manby spent almost 20 years in the auto industry in general management and marketing roles, primarily at General Motors in the Saturn and Saab divisions. Mr. Manby served as CEO of Saab Cars USA from 1996 to 2002 where he was instrumental in the turnaround of the brand. During his tenure, he led the implementation of aggressive strategies to improve distribution strength and to increase customer satisfaction. While at Saturn, Mr. Manby was influential in formulating and executing the brand’s customer-focused philosophy that led Saturn to quickly rise to the top of small car brands in the U.S.

“With his 30-years of general management and industry-leading customer service experience, Joel brings a unique perspective to our Board and will be a significant asset to the entire Popeyes leadership team,” said Cheryl Bachelder, AFC Enterprises Chief Executive Officer. “We are extremely pleased to have Joel join our Board and we look forward to his contributions.”

Mr. Manby holds a Bachelor of Arts degree in Economics from Albion College and a Master of Business Administration degree from Harvard Business School.

“We are delighted to welcome Joel to our Board,” said John Cranor, AFC Enterprises Board Chairman. “ We are confident that Joel’s proven experience in delivering results through implementing a branded guest and employee experience will be valuable to Popeyes’ focus on delivering a guest experience as distinctive as its food.”

### **Corporate Profile**

AFC Enterprises, Inc. is the franchisor and operator of Popeyes® restaurants, the world’s second-largest quick-service chicken concept based on number of units. As of April 21, 2013, Popeyes had 2,119 operating restaurants in the United States, 3 territories, and 28 foreign countries. AFC’s primary objective is to deliver sales and profits by offering excellent investment opportunities in its Popeyes brand and providing exceptional franchisee support systems and services to its owners. AFC Enterprises can be found at [www.afce.com](http://www.afce.com).

### **AFC Contact Information**

Investor inquiries:

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