

BLOGS
Insurance

Appellate Court Enforces Franchisee's Obligation to Defend

A franchisor is not obligated to contact its franchisee's insurance company directly in order to invoke the franchisee's obligation to defend and indemnify the franchisor, the Michigan Court of Appeals ruled late last month. *Basset v. Burger King Corp.*, 2010 Mich. App. LEXIS 2091 (Mich. App. Oct. 28, 2010). This decision arose out of a personal injury case in which only the franchisor was sued originally. It notified the franchisee of the lawsuit and demanded defense and indemnity under the franchise agreement. When the franchisee failed to assume defense of the case, BKC was forced to incur over \$20,000 in defense costs. The trial court granted summary disposition in BKC's favor on its claim against the franchisee to recoup those expenses.

On appeal, the issue was whether the franchisor was required to "mitigate its damages" by going directly to the franchisee's insurance company to demand a defense. Nothing in the franchise agreement required the franchisor to do so, the court of appeals held.