



**Court:** Jackson County District Court  
**Case Number:** 2020-CV-000003  
**Case Title:** State of Kansas Attorney General Derek Schmidt vs. James Curry, et al.  
**Type:** Journal Entry of Default Judgment as to Defendant Billy Curry

SO ORDERED.

A handwritten signature in black ink, appearing to read "Norbert C. Marek", is written over the typed name.

/s/ Norbert C. Marek, District Court Judge

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**IN THE DISTRICT COURT OF JACKSON COUNTY, KANSAS**

**STATE OF KANSAS, *ex rel.*,**  
**DEREK SCHMIDT, Attorney General,**

**Plaintiff,**

v.

**JAMES CURRY, an individual**  
**d/b/a MIDWEST ASPHALT**

**and**

**BILLY CURRY, an individual**  
**d/b/a MIDWEST ASPHALT**

**Defendants**

**Case No. 2020-CV-000003**

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**(Pursuant to K.S.A. Chapter 60)**

**JOURNAL ENTRY OF DEFAULT JUDGMENT AS TO DEFENDANT BILLY CURRY**

**NOW**, on this date, Plaintiff’s Motion for Default Judgment against the Defendant, Billy Curry, an individual doing business as Midwest Asphalt, and Memorandum in Support (“Motion for Default Judgment”) comes before this Court for consideration. The State of Kansas *ex rel.* Derek Schmidt, appears by and through counsel, Assistant Attorney General Sarah M. Dietz.

**WHEREUPON**, after reviewing the Court’s file and Plaintiff’s Motion for Default Judgment, the Court finds the following:

1. Plaintiff filed a Petition against Defendant Billy Curry doing business as Midwest Asphalt on January 16, 2020.

2. Plaintiff's Motion for Default Judgment is predicated on Defendant Billy Curry's failure to file an Answer to the Plaintiff's Petition, which was filed on February 10, 2020.

3. Defendant Billy Curry, was served with Plaintiff's Petition and Summons by Personal Service January 16, 2020 at Brown County Jail, Hiawatha, Kansas located at 709 Utah Street, Hiawatha, KS 66434.

4. Defendant Billy Curry has failed to file an Answer within 21 (twenty-one) days after being served with process, as required by K.S.A. 60-212(a).

5. Defendant Billy Curry is not a minor or an incapacitated person.

6. Defendant Billy Curry is in default pursuant to K.S.A. 60-255.

7. Defendant Billy Curry has not appeared in this action. Therefore, no notice of a hearing on Plaintiff's Motion for Judgment by Default need be served on Defendant Billy Curry, pursuant to K.S.A. 60-255(a) and K.S.A. 60-205(a)(2).

8. Defendant Billy Curry is an individual doing business as Midwest Asphalt. Defendant Billy Curry has a residential address of [REDACTED] Kansas [REDACTED].

9. At all times relevant hereto, and in the ordinary course of business, Defendant Billy Curry acted as a "supplier," as that term is defined by K.S.A. § 50-624(l).

10. At all times relevant hereto, and in the ordinary course of business, Defendant Billy Curry made or caused to be made "consumer transactions," as that term is defined by K.S.A. § 50- 624(c).

11. Defendant Billy Curry made or caused to be made "door-to-door sales" as defined

by K.S.A. 50-640(c)(1).

12. Defendant Billy Curry made or caused to be made door-to-door “sales” with consumers as defined by K.S.A. 50-624(b).

13. Defendant Billy Curry made or caused to be made door-to-door sales with “elder consumers” as that term is defined in K.S.A. 50-676.

14. Around December of 2019, Defendant Billy Curry engaged in the business of and acted in the capacity of a supplier within this state.

15. Defendant Billy Curry contracted with at least two (2) Kansas consumers for asphalt and paving services in the following amounts:

A. R.A. - \$1,200, and

B. M.M. - \$1,600.

16. On or about December 2, 2019, R.A., Mayetta, Kansas purchased paving and asphalt services from Defendant Billy Curry.

C. Defendant Billy Curry represented to R.A. that he would lay the asphalt for 4 inches thick. The layover was only 2 inches thick after completion.

D. The consumer wrote a check for \$1,200 on December 2, 2019. The check was cashed on December 2, 2019.

E. The consumer is a protected consumer as an “elder person” as defined in K.S.A. 50-676(a).

F. The amount of loss is: \$1,200.00.

17. On or about November 1, 2019, M.M., Mayetta, Kansas purchased paving and asphalt services from the Defendant Billy Curry.

- G. Defendant Billy Curry represented to M.M. that he would lay the asphalt for 4 inches thick. The layover was only 2 inches thick after completion.
- H. The consumer wrote a check for \$1,600 on November 1, 2019. The check was cashed on November 1, 2019.
- I. The consumer is a protected consumer as an “elder person” as defined in K.S.A. 50-676(a).
- J. The amount of loss is: \$1,600.00.

18. Defendant Billy Curry failed to provide the consumers with a written notice of their three day right to cancel the transaction in violation of K.S.A. 50-640(b)(1).

19. Defendant Billy Curry failed to provide the consumers with a completed form in duplicate containing notice of the three day right to cancel in violation of K.S.A. 50-640(b)(2).

20. Defendant Billy Curry willfully used in an oral representation of an exaggeration, falsehood, innuendo or ambiguity as to a material fact in violation of K.S.A. 50-626(b)(2).

**IT IS THEREFORE ORDERED, ADJUDICATED AND DECREED** that Plaintiff’s Motion for Default Judgment is granted.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that Judgment is hereby entered against Defendant Billy Curry and in favor of Plaintiff on all Counts of the Petition.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that the actions and practices alleged are declared to be deceptive and unconscionable and in violation of the Kansas Consumer Protection Act.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that Defendant Billy Curry be permanently enjoined from engaging in acts and practices alleged in the Plaintiff's Petition to be violations of the Kansas Consumer Protection Act.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that Defendant Billy Curry pay reasonable investigative fees and expenses of the Office of the Kansas Attorney General, pursuant to K.S.A. 50-632(c)(7), in this case amounting to \$5,000.00.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that Defendant Billy Curry pay civil penalties for each violation of the Kansas Consumer Protection Act alleged in the Plaintiff's Petition, pursuant to K.S.A. 50-636(a), in this case amounting to \$60,000.00.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that Defendant Billy Curry pay an enhanced civil penalty for each violation of the Kansas Consumer Protection Act alleged in the Plaintiff's Petition against an "elder persons", pursuant to K.S.A. 50-677, in this case amounting to \$60,000.00.

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that Defendant Billy Curry pay consumer restitution in the aggregate of two thousand eight hundred dollars (\$2,800), as provided by K.S.A. 50-632(c)(2).

**IT IS FURTHER ORDERED, ADJUDICATED AND DECREED** that Defendant Billy Curry pay all Court Costs and all costs associated with distributing and executing this judgment.

**IT IS SO ORDERED.**

**THIS ORDER IS EFFECTIVE AS OF THE DATE AND TIME OF THE ELECTRONIC FILE STAMP.**

Respectfully submitted,

/s/ Sarah M. Dietz

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