

See 532 U.S. at 436-38, 121 S.Ct. at 1686-87. It concludes that scrutiny as to an award itself, particularly the amount, does not violate the Seventh Amendment because it is “not really a ‘fact’ ‘tried’ by the jury.” *Leatherman Tool*, 532 U.S. at 437, 121 S. Ct. at 1686. The nature of defendant’s misconduct is, however, a fact which should be decided by the jury where, as here, Plaintiff has made out a submissible case in that regard as to defendant Abex.

*Angotti distinguished by Hoskins v. Business Men's Assurance*

Defendants have historically relied upon *Angotti v. Celotex Corp.*, 812 S.W.2d 742 (Mo.App. W.D.1991) in arguing that the evidence in a case does not support the submission of punitive damages. Plaintiff anticipates Abex will follow suit and argue punitive damages should not be submitted to this jury pursuant to *Angotti*. Plaintiff submits to this Court that *Angotti* must be carefully reviewed in light of a recent decision by the same appellate court that decided *Angotti*.

The Missouri Court of Appeals, Western District, issued its recent decision in the *Hoskins v. Business Men's Assurance*, 116 S.W.3d 557 (Mo. App. W.D. 2003). In *Hoskins*, the Court held the plaintiff had established through clear and convincing evidence that the manufacturer had actual knowledge its asbestos-containing product was unreasonably dangerous to persons of a particular class. In *Hoskins*, the Plaintiff, Forest Hoskins, was an operating engineer exposed to an asbestos-containing product known as Sprayed Limpet after September 1978. The Sprayed Limpet was installed in a new high rise building in 1962 and 1963. Plaintiff was exposed to the Sprayed Limpet beginning some fifteen years later while working around the areas where Sprayed Limpet had been applied.

The Court found in a 1962 internal T & N memorandum, an executive expressly warned that even if T & N were to develop a dustless and “safe” method for applying Sprayed Limpet,