S.W.3d 151, 160 (Mo. banc 2000). It would be disingenuous for Plaintiff to deny that Missouri takes a rather strict view, when it comes to awarding punitive damages.

Nevertheless, the basic determination concerning what defendant knew or should have known and whether it manifested complete indifference or conscious disregard, involves pure questions of fact to be decided by the jury. *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 532 U.S. 424, 121 S.Ct. 1678 (2001), which is cited in *Alcorn*, provides for close scrutiny (including *de novo* appellate review) of punitive damage awards. This does not apply to jury determinations as to the egregiousness of a defendant's misconduct, which do not fix an amount of punitive damages. *See* 50 S.W.3d at 247. What the Court held, in *Leatherman Tool*, was the "constitutional issue [implicated by an award of punitive damages] merits *de novo* review." 532 U.S. at 431, 121 S.Ct. at 1683. The constitutional issue, in essence, is whether or not the punishment imposed by the jury fits the crime. *See Leatherman Tool*, 532 U.S. at 433-34, 121 S.Ct. at 1684. The "abuse-of-discretion standard" applies, where no constitutional issue is raised. *Leatherman Tool*, 532 U.S. at 433, 121 S.Ct. at 1684. Until some punishment is actually imposed (i.e. punitive damages are awarded), there is no need for heightened judicial scrutiny.

Under Missouri law, once the jury has decided that a defendant's conduct was sufficiently egregious, it ***may*** award punitive damages...but it is not ***required*** to do so. *See Alcorn,* 50 S.W.2d at 247, n. 21. (Emphasis added.) Again, judging the nature of defendant's conduct is a question of fact which, by itself, does not implicate the sort of subjective moral assessment involved in deciding if punitive damages are warranted and what the amount should be.

Indeed, although punitive damages are not viewed as a right or entitlement, the plaintiff does have the right to have the jury decide fairly presented questions of fact. In *Leatherman Tool*, the Court acknowledges that higher judicial scrutiny raises Seventh Amendment concerns.