

2017

**STATE FLEET
MANAGERS
WORKSHOP**

**September 12-14
Des Moines, Iowa**



Negligent Entrustment – Policy and Education

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MERCURY

2017

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INTRODUCTION

Synopsis

Negligent Liability carries some of the most serious risk that fleet managers are exposed to. Awards as a result of negligent entrustment can be very large. This occurs when a driver is entrusted with a vehicle that is owned (or leased) by the fleet and driven by an employee (**or other authorized individual**). Your fleet may be liable if it knew, or should have known, that a driver was not able to safely operate a vehicle, but was allowed to drive anyway. Generally, the courts determine whether the behavior was consistent with accepted industry standards.

This session will help government fleets avoid lawsuits by educating fleet managers how to institute a standard of care that includes things **such as properly verified driver records, reasonable safety programs and appropriate driver policies and procedures.**

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Question #1

Are government fleet managers protected from civil law suits under the doctrine of sovereign immunity?

Answer: Fleet managers acting within the scope of their employment are protected by federal and state tort claims acts and indemnification by their employer

Question #2

Could you personally be held liable under civil law if:

- A vehicle wasn't properly maintained?
- Passengers are hurt by equipment dislodged as a result of a crash?
- The type of safety equipment you chose to install failed and the vehicle is involved in a crash?

Answer: Generally, no, unless your act was egregious or grossly negligent and taken with intent, or you acted for your personal benefit, or your act was illegal

Question #3

Could your employer be negligent if:

- If you procure unsafe vehicles?
- If you fail to properly maintain and repair vehicles?
- If you hire incompetent service technicians?
- If drivers are improperly trained to operate vehicles?



YES

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DEFINITIONS

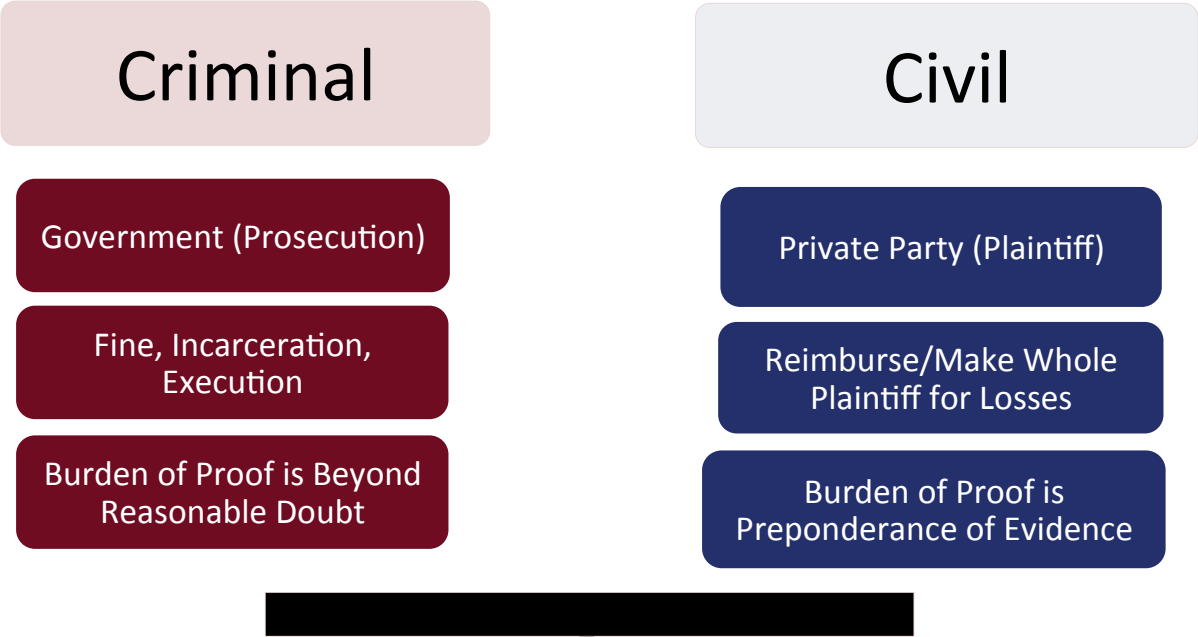


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Criminal Law vs. Civil Law



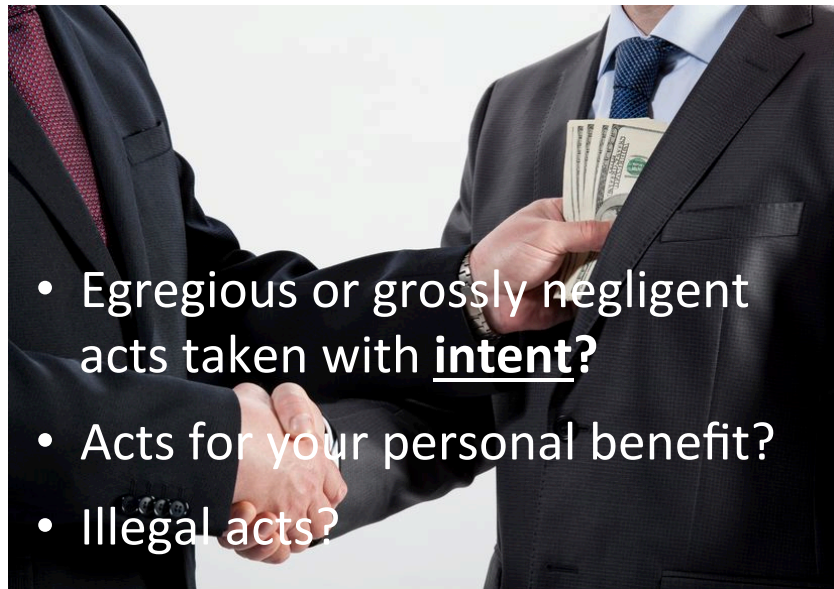
What's Scope of Employment?

In Scope

JOB DESCRIPTION

- Benefit the employer?
- Are within your written or understood general responsibilities?
- Are performed during work hours?
- Are performed at work place?

Not in Scope



- Egregious or grossly negligent acts taken with **intent**?
- Acts for your personal benefit?
- Illegal acts?

Intent



What's Negligence?

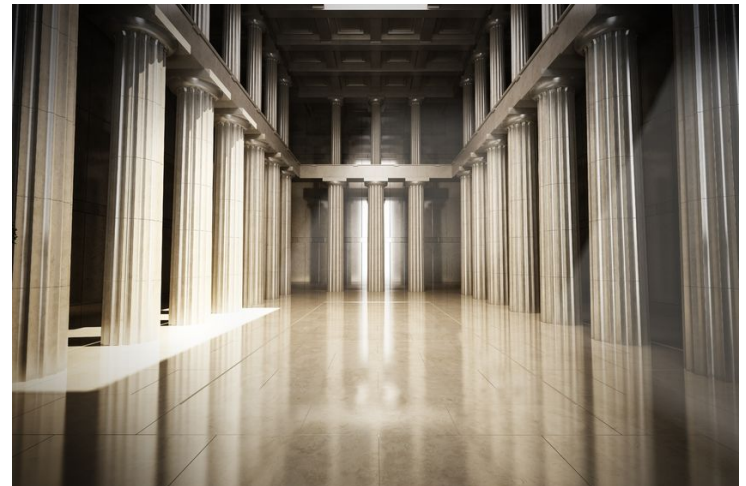
- Failure to use **reasonable** care in acting that would be expected from a **reasonably** prudent person in similar circumstances that causes **unreasonable** risk of harm to others
- Greatest risk for fleet organizations, since vehicles are inherently dangerous equipment



(As far as we know, picture is public domain)

Elements of Negligence

- Plaintiff must prove:
 - Existence of a **duty** on the part of the defendant to conform to a specific **standard of care** for the protection of the plaintiff against an **unreasonable** risk;
 - **Breach** of that duty by the defendant;
 - That the breach of duty by the defendant was the **actual and proximate cause** of plaintiff's injury; and
 - That **damage** was caused to plaintiff's person or property.



Employer Liability

- **Negligent Hiring**
 - Failure to use due care when hiring
 - Employer knew or ought to have known
- **Negligent Entrustment**
 - Failure to use due care in retaining only safe and competent employees or contractors
 - Based on *entrustment*
 - Not necessary to establish employer/employee relationship
 - Employer knew or ought to have known of person's incompetence



What is Ordinary vs. Gross Negligence?

Ordinary

- Failure to exercise reasonable care (“reasonable person standard”), and
- Condition contributed to the crash.

Gross

- Conscious and voluntary disregard to use reasonable care, and
- Condition was likely to cause foreseeable grave injury or harm.

Ignorance of the Law

- Ignorance is not an excuse
 - “I didn’t know it was wrong or illegal.”
- “Willful blindness” is equivalent to knowledge
 - Should have known and could have asked
 - Deliberately chose not to ask



What is Vicarious Liability?

- One person commits an act (in fleet, usually the driver) harming a second person and a third party (the employer) will be liable
- Latin term for this legal doctrine is “*Respondeat Superior*,” meaning “Let the master respond”
- Employer is responsible for employee acts within the scope of employment and tied to the employer

What is Tort Liability?

- A “tort” is a civil wrong – breach of legal duty
- Tort Law is a body of rights, obligations, and remedies applied by civil courts
- Elements are duty, breach, causation, and injury
- Victim seeks remedy for damages



Sovereign Immunity and Federal Tort Claims Act

- The doctrine of sovereign immunity holds that governments cannot be sued for tort liability without their express consent
- **Federal Tort Claims Act (1946)** grants that consent (28 U.S.C. Section 1346 [b])
 - It states that the federal government can be sued for wrongful acts or negligence or omission by any employee of the Government while acting under the scope of his office or employment under circumstances where the U.S., if a private person, would be liable
 - FTCA complied with sovereign immunity by creating the required “express consent”

State Tort Claims Acts

- All states have adopted tort claims acts
- Many similar to FTCA
- Most states have limited recovery
 - 35 states limit or cap recovery, some as low as \$100,000
 - Some cap recovery at \$100,000 except for negligence involving motor vehicles that are not capped at all

Source: National Conference of State Legislatures



Note About Pursuits and Emergency Response

Special circumstances due to importance to general public

- State courts generally held pursuit must be conducted with gross negligence for government to be liable
- Or a higher standard: plaintiff must show police officer acted willfully and wantonly, with conduct that “shocks the conscience”*
- California requires police departments to adopt written pursuit policies

*U.S. Supreme Court in Lewis v. Sacramento has held that in suits brought under U.S.C. 1983 (lawsuits for violations of a person’s constitutional rights).

** USA Today. Thomas Frank. July 30, 2015.



>11,500 Pursuit Deaths Since 1979**	Deaths
Police	139
Fleeing Suspects	6,301
Bystanders / Passengers	5,066



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SAMPLE CASES

State of South Carolina

Clark v. South Carolina Dept. of Public Safety, No. 25926, 608 S.E. 573 (S.C. 2005)

Case: State trooper in high-speed pursuit of DUI suspect resulted in death of pursued suspect

Judgment: trooper grossly negligent for beginning and failing to end the pursuit (jury)

Damages: \$3.75 million, later reduced to \$250,000 under South Carolina's Tort Claims Act

University of Connecticut

David Plamondon (family) v. **State of Connecticut** (2011)

Case: Student killed while in a crosswalk by campus shuttle bus driven by another student

Judgment: driver pleaded no contest to negligent homicide and sentenced to two years probation

Damages: \$5.5 million settlement (September 2013)



Federal

Roark v. U.S., No.6:05CV00041, 2006 U.S. Dist. Lexis 74784 (W.D. Va.)

Case: FBI agent rear-ended another vehicle that subsequently rear-ended the plaintiff's vehicle

Judgment: negligence (under Federal Tort Claims Act)

Damages: \$1.16 million plus medical expenses



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STANDARD OF CARE

Standard of Care for Fleet Professionals

- Judged as what the **reasonable**, prudent fleet professional in the fleet field would do under similar circumstances
- **If** the court finds that the fleet organization's behavior does not meet the standards in the fleet industry, the employer can be liable for negligence

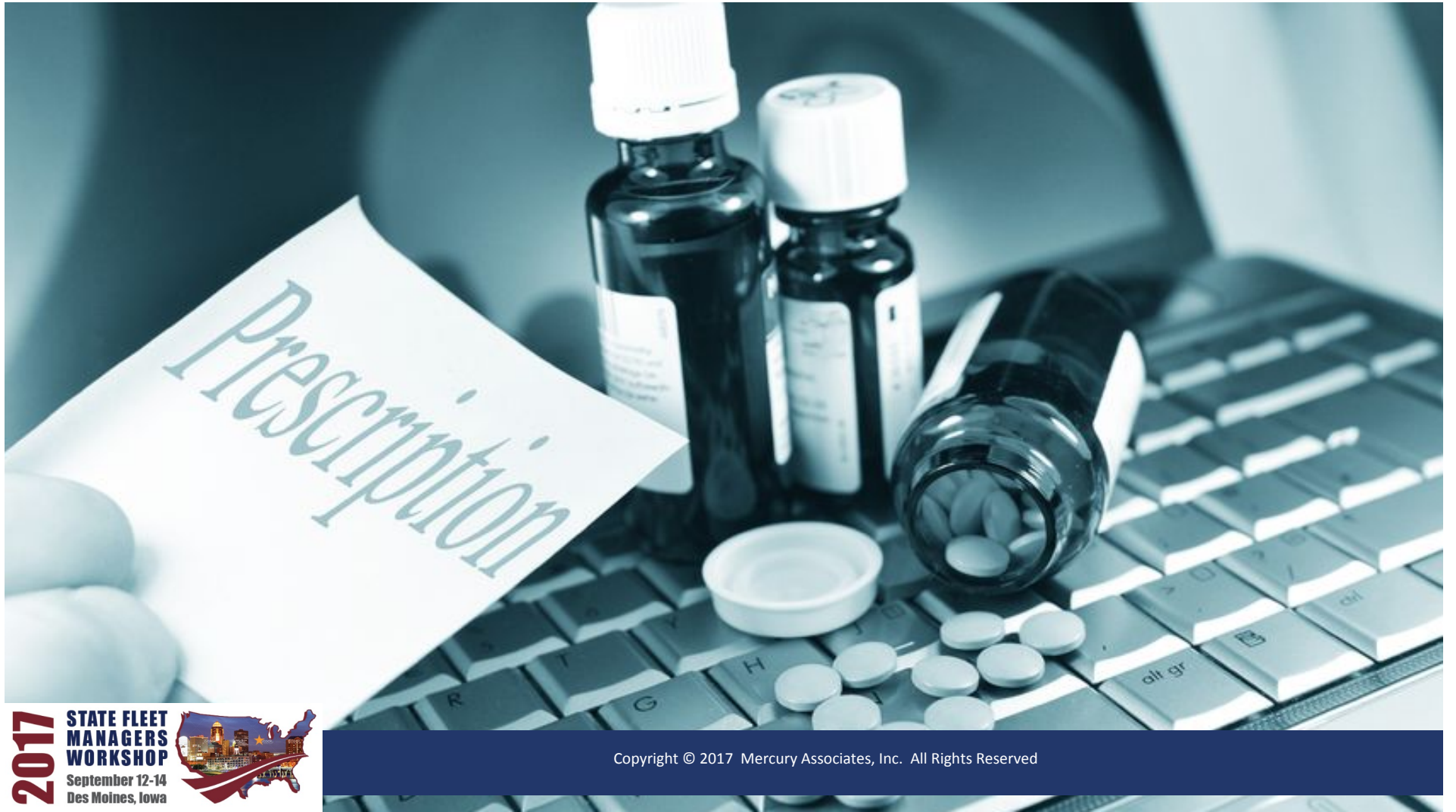
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CHALLENGES FOR FLEET MANAGERS



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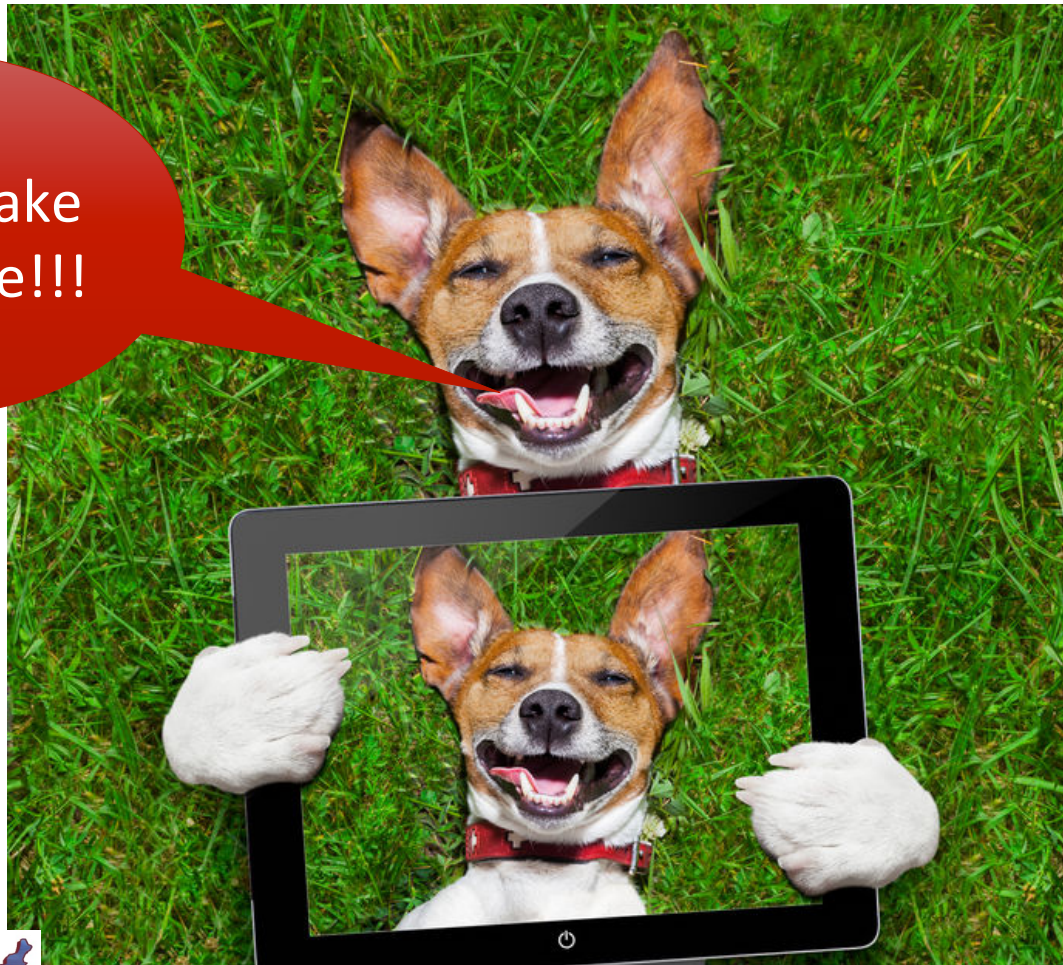


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Hurry...take
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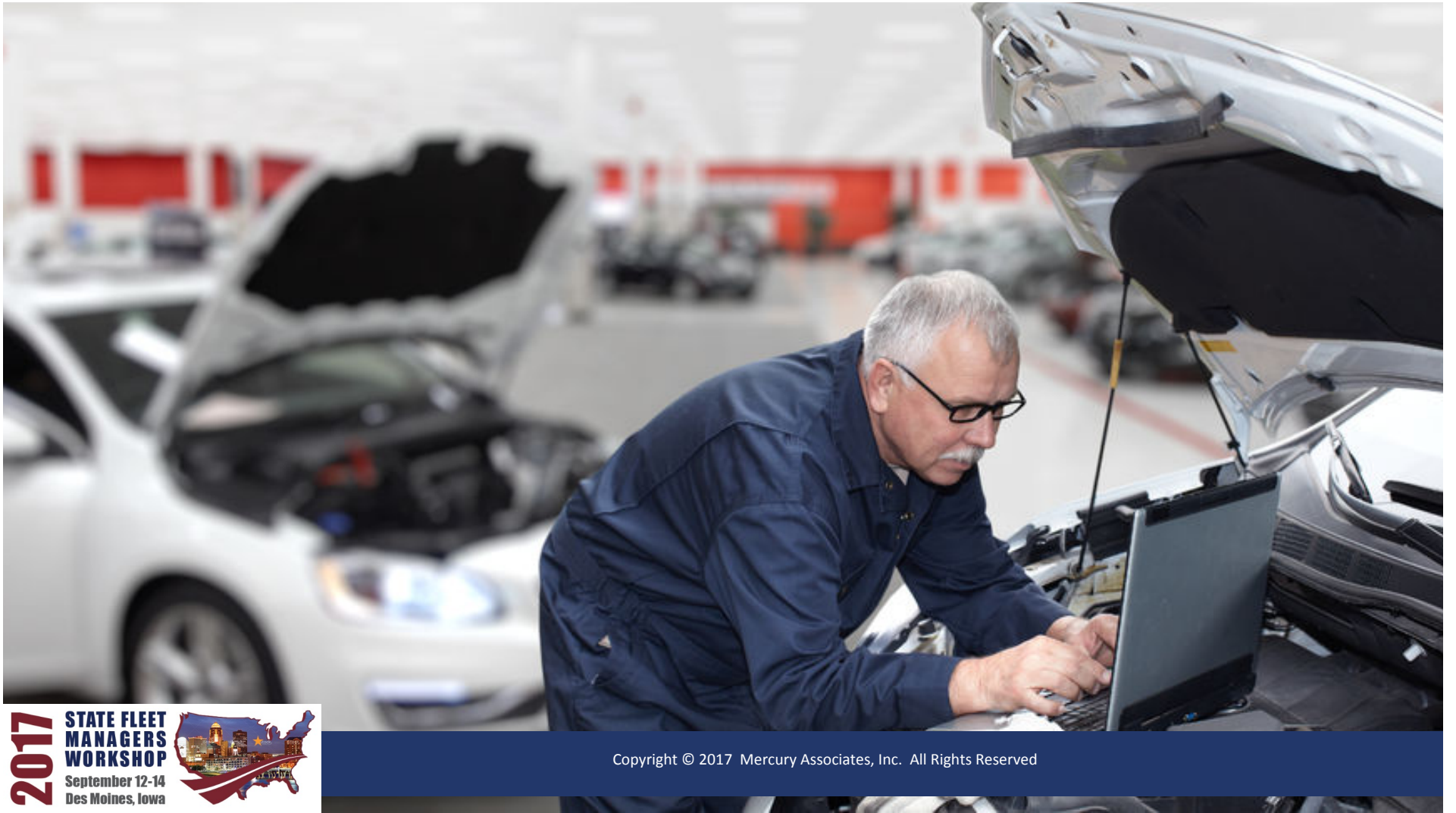
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Auto Rental NEWS

AutoAp Launches Recall Notification Service

By Chris Brown, September/October 2015 - Also by this author

Dynamic Recall ManagementSM

NHTSA www.nhtsa.gov

OEMs

DOWNLOAD NHTSA Y/M/M/S RECALL DATA DAILY, ANALYZE & CORRECT NHTSA ERRORS TO > 98% ACCURACY

DUAL SOURCE AUTOMATED SAFETY RECALL STATUS VERIFICATION PLUS EXPERT RECALL ANALYSIS

DAILY, PROPRIETARY SAFETY RECALL PROCESS

Daily Safety Recall Status Unknown

Daily Safety Recall Status Known

Daily Fleet VIN File

OPEN

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**C O N T A C T
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