Historical Justification for the SC Justice Act

## *A Short Story of the Worst Liability Systems in the Country*

In **1991 The Toal (Supreme) Court**, a progressive-minded ("activist") Supreme Court bench, flips the state's **Doctrine of Contributory Negligence** by judicial fiat – imposes **Comparative Negligence**…"the more fair doctrine."

The former doctrine was harsh; if a plaintiff contributed in any way to their own injuries, they were barred from recovery. The new doctrine would purport to have each party be responsible for their own liability. But the system is never properly codified to be administered "fairly" and consistently across the state. 1% fault triggers 100% liability.

No corrective legislation follows, no codification so the new "system" works, heads remain buried in the sand, backs are turned to reform. Meanwhile, the abusive Hampton County "system" grows, spawns across the Lowcountry.

In **2005**, after years of confusion and abuse, the legislature misses the mark on "reform" passing a flawed **"Modified" Comparative Negligence Bill** as part of a larger "Tort Reform" package. (That's likely at the heart of how we got here – it's one provision within a "package." In the process, the defense bar is so fed up with drives to Hampton County only for beatings or force-fed inflated settlements, they rally to fix the Venue Law along with it. That "modified" version is a major, plaintiff-friendly, compromise the "business community" makes in good faith.)

In **2008**, the Toal Court follows with a Decision in ***James v. Kelly Trucking*** opening the door to direct negligence claims against employers, even after the employer accepts vicarious liability for the actions of its employee. Instead of an accident claim being about who ran the stop light, now it's *"is there anything else about that driver or fleet that we can find and complain about or threaten with?"* The state joins a minority of states allowing "lawsuits withing lawsuits," open season for abuses and trucker-hunting, punitive damages claims. Another gamechanger.

Bills and calls to address the problems fall on deaf ears. Abuse grows, unabated.

There's no catalyst for change until the **2017** Supreme Court instructs on the 2005 legislation – which is ignored for two more years.

The **Coalition for Lawsuit Reform** reconstitutes with 2017 dissenter/former Supreme Court Justice **Costa Pleicones** crafting remedial legislation. The stiff-arm stiffens.

COVID stalls all for two full years.

In **2023 S.533, the SC Justice Act** is sponsored by all of the Senate's Republican leadership, (except for Luke Rankin), and more, plus two genuinely pro-business Democrats. A majority of 24 Senators in all.

Senate President **Thomas Alexander** must press uncharacteristically hard just to get a sub-committee appointed, hearings held. The Leadership's bill faces a subcommittee stacked against it, with a Democratic opponent as chairman. It's slow-walked.

Two late-'23-session, token hearings are conducted. Each tightly scheduled and limited in duration. Proponents are effectively squeezed. The session ends, there are no hearings over the interim.

**2024** reconvenes. It's weeks before the next hearing, but again, each has been scheduled and choreographed with narrow time windows for proponents. MADD and an ill-informed "subject matter expert," trial-lawyer-association-hired consultant filibuster two meetings.

Defense attorneys who get paid by the hour, dutifully prep and come to town, generally to be short-changed and field too-few questions by those who get paid contingency fees. Proponents are reticent to ask for more "time," they've provided submissions and comments for years. All this effectively stifles opportunities for fully vetting the issues in a timely manner. The lack of genuine interest casts a pall over the proceedings, leading to further cynicism by concerned citizens and business interests. Judiciary reports a gutted bill, but even then, time has ticked away.

A token, narrow Special Order vote barely puts it in priority position, and the pressure's on for "compromise." But the bill's so simple, there is no room to "give." Certainly not from the perspective of those who only take. Bad faith trial bar "negotiations" only offer poison pill language. Proponents, wiser from the lessons of the past, say "No, not again. Not any more." All walk away. Again.

This would be maddening if not so predictable, including, defecting sponsors.

The South Carolina legislature fails once again to level the field, to deliver closure to one of the worst periods of lawsuit abuse in any state in the United States of America.

The Contingency Fee Caucus remains dominant, alive a well in the South Carolina General Assembly.