Historical Justification for the SC Justice Act (S.533/H.3933)

A Short Story of the Worst Liability Systems in the Country

In **1991 The Toal (Supreme) Court**, a progressive-minded (some would label "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.

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. The Senate utterly ignores calls for any "reforms" after the reform-minded chairman of the Judiciary Committee gets taken out by the trial lawyers. His replacement has no appetite for them.

Nothing serves as a catalyst for change until the **2017** Supreme Court instructs on the 2005 legislation. That 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. A House sub-committee pretends to give the Coalition/Pleicones one late-session hearing, but it ends before he has the chance. He's treated like he's just part of the "lobby" because he works for the "reform" crowd.

COVID stalls all for two full years.

Edgefield's Senate Majority Leader **Shane Massey** tries repeatedly to lead a jump-start, introducing bills.

In **2023 S.533, the SC Justice Act** is sponsored by all of the Senate's Republican leadership, except for Judiciary's chairman, plus two pro-business Democrats. That's a numerical majority of 24 in the 46-member body.

Senate President **Thomas Alexander** presses uncharacteristically hard just to get a sub-committee appointed. The chair of the subcommittee for the leadership's bill is a Democrat plaintiffs' attorney who had led opposition and the amendments to the 2005 bill. A subcommittee of seven is constituted of four known plaintiff-attorney-opponents, two others who by posture appear at a minimum, softly opposed, and one other, a sponsor. Proponents assume a watered down – or gutted report, if any. A similar fate surely awaits in full committee.

Two late-'23-session, token hearings are conducted. Each scheduled to be tightly limited in duration. Proponents effectively get time further squeezed due to mandatory end-times forced by Session starting times. One defense attorney from Charleston is granted less than three minutes. At the second hearing, proponents are positioned to follow a class-action-centered, filibustering attorney, getting only a small amount of time before adjournment. A couple of rhetorical questions get answered, then summarily dismissed with rebuttals erroneously suggesting how the law/process really works.

In each, proponents are told "please keep your comments short, we're running out of time." Session adjourns. No study or hearings happen 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.

Only one defense lawyer gets enough time to make a few guarded statements and answer the few questions they have for him. But he's called up at the end of a long evening, and everyone's fatigued. 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 the chairman would likely later claim they had.

Lawyers who do testify ever so briefly are sworn in "under oath." Lobbyists and non-attorneys choose not to testify in this tense potentially technical forum, rightfully concerned they'll be tripped up by the opponent lawyer-legislators who might treat them like they would a hostile witness in a courtroom. So, they stand down.

Opponents appear in the loop on agendas, schedules, and timing. Proponents seem to be on their heels, in the dark, and when given the chance, it's always too late for full explanations and proper responses to cross-examinations or redirects. The lack of genuine interest has cast a pall over the proceedings.

The chairman might suggest that he's given the proponents time, but that they didn't take advantage of it when they had the chance. Witness the very end of February 28th's hearing which had to end at 1:00. He asks with less than ten minutes left before mandatory adjournment. That would only allow the "other side" to demand equal time to further drag things out.

They say they'll "be taking info," may call another meeting "in a couple of weeks," but "the Senate is log-jammed" and that their "intent is to move at some point," but that they "will need to know…" It was suggested they might consider the opinions of Justices **Kittredge** and Pleicones from the 2017 case. That alone eats at least two more weeks. Early on, *that* might have been a catalyst.

This would be maddening if not so predictable. Time ticks away.

So, of course, now with the pressure on, opponents and fence-sitters signal “compromise.” But this issue is so basic, so simple, so decades in the deferral, there is none.

The “fair” and reasonable solution is closure with passage of S.533.