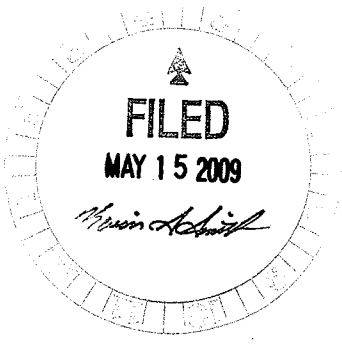

In the
Indiana Supreme Court

Aleksander STOJCESKI, *et al.*, Appellants,	)	Court of Appeals No. 45A03-0712-CV-583
v.	)	
NORTHERN INDIANA PUBLIC SERVICE COMPANY, Appellee.	)	Trial Court No. 45D10-0510-CT-177

ORDER DENYING TRANSFER

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals. The submitted record on appeal, all briefs that were filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

The Court notes that the Court of Appeals found reversible error in the trial court's failure to give Appellants' tendered jury instruction on *res ipsa loquitur*. This Court now DENIES the petition to transfer jurisdiction, understanding the Court of Appeals' mandate, which reverses and remands for further proceedings on the claims of Appellants Aleksander Stojceski and Goran Prentoski, not to require retrial of the issue of the total amount of their damages but only comparative fault, pursuant to Indiana Appellate Rule 66(D), which provides: "If a new trial is necessary, it shall be limited to those parties and issues affected by the error unless this would be impracticable or unfair." *See also* Ind. Trial Rule 59(J).

The Clerk is directed to send a copy of this order to counsel of record. The Clerk is also directed to post this order to the Court's website.

Done at Indianapolis, Indiana, this 15th day of May, 2009.

RT Shepard

Randall T. Shepard
Chief Justice of Indiana

All Justices concur.