



## OFFICE OF THE CLERK

**Supreme Court of Wisconsin**

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February 11, 2013

**To:**

Hon. Timothy G. Dugan  
Milwaukee County Circuit Court Judge  
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Milwaukee, WI 53233

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Milwaukee County Clerk of Circuit Court  
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You are hereby notified that the Court has entered the following order:

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No. 2011AP414

Horak v. Building Services Industrial Sales Company  
L.C.#2005CV8783

On September 14, 2012, the court granted the petition filed by defendant-respondent-petitioner, Building Services Industrial Sales Company (BSIS), seeking review of a published court of appeals' decision. Horak v. Building Services Industrial Sales Company, 2012 WI App 54, 341 Wis. 2d 403, 815 N.W.2d 400. The petition presented an issue regarding the application of the ancient documents exception to the hearsay rule, Wis. Stat. § 908.03(16).

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On October 31, 2012, plaintiff-appellant, Cindy Horak, filed a motion to supplement the record on appeal with two “relevant trial court rulings and related evidence” including evidence from a deposition taken after the ruling of the trial court in this case that apparently bears on the authenticity and admissibility of disputed documents. On November 19, 2012, BSIS filed its response recommending the court deny the motion to supplement the record or, in the alternative, permit it to submit other trial court rulings it deems relevant to consideration of this case.

We are mindful of the petitioner’s point that this motion was filed some eighteen months after the trial court record was sent to the court of appeals. However, the appellate brief of BSIS, the pending motion, and the response raise several questions about the scope of the record on appeal that will impede supreme court review and are more appropriately resolved by a circuit court. Therefore, we conclude that the petition for review was improvidently granted. We dismiss and remand the cause to the circuit court. Accordingly, we need not address the pending motion to supplement the record.

IT IS ORDERED that the review of the decision of the court of appeals is dismissed as improvidently granted.

IT IS FURTHER ORDERED that the motion to supplement the record is dismissed as moot.

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Diane M. Fremgen  
Clerk of Supreme Court