

## NY CLS CPLR R 4528

Current through 2025 released Chapters 1-207

*New York*

*Consolidated Laws Service* >  
*Civil Practice Law And Rules (Arts. 1 — 100)* >  
*Article 45 Evidence (§§ 4501 — 4551)*

### **R 4528. Weather conditions.**

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Any record of the observations of the weather, taken under the direction of the United States weather bureau, is prima facie evidence of the facts stated.

### **History**

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Formerly § 4528, add, L 1962, ch 308; amd, L 1962, ch 315, § 1, eff Sept 1, 1963.

Annotations

### **Notes**

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#### **Prior Law**

Earlier statutes: CPA § 375; CCP §§ 944, 961–f.

#### **Advisory Committee Notes**

This rule is the same as former § 375, except for a number of minor language changes. The reference to certification and admissibility of copies in the former statute is covered by CPLR rule 4539(a).

### **Notes to Decisions**

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## **I.Under CPLR**

### **1.Generally**

## **II.Under Former Civil Practice Laws**

### **2.Generally**

### **3.Authentication**

## **I. Under CPLR**

### **1. Generally**

Since from climatological reports in evidence it appeared that snow had, except for traces, ceased on day of accident, issue whether defendant had notice of the snow on its driveway and an opportunity to clear it off was properly before the jury. *Jackson v Ideal Management Corp.*, 55 A.D.2d 879, 390 N.Y.S.2d 425, 1977 N.Y. App. Div. LEXIS 10073 (N.Y. App. Div. 1st Dep't 1977).

While N.Y. C.P.L.R. 4528 permits records of weather observations taken under the direction of the United States Weather Bureau to be prima facie evidence of the facts stated, no climatological data was submitted in connection with the affidavit of a meteorologist, to the effect that, based upon the weather conditions existing around the time that a lessee slipped and fell on an ice patch on an owner's property, the patch of ice on which the lessee fell would have formed no more recently than two days prior to the lessee's accident. Thus, the meteorologist's affidavit lacked an adequate foundation and could not be considered. *Martin v RP Assoc.*, 37 A.D.3d 1017, 830 N.Y.S.2d 816, 2007 N.Y. App. Div. LEXIS 1984 (N.Y. App. Div. 3d Dep't 2007).

New York City Housing Authority's motion for summary judgment was properly denied, as it was not entitled to judgment as a matter of law dismissing a personal injury complaint based on the

“storm-in-progress” rule; N.Y. C.P.L.R. 4528 provided that any record of the observations of the weather, taken under the direction of the United States Weather Bureau, was prima facie evidence of the facts stated. The climatological data demonstrated that there was no storm in progress at the time of plaintiff’s accident. *Dancy v New York City Hous. Auth.*, 23 A.D.3d 512, 806 N.Y.S.2d 630, 2005 N.Y. App. Div. LEXIS 13321 (N.Y. App. Div. 2d Dep’t 2005).

## **II. Under Former Civil Practice Laws**

### **2. Generally**

A party to an action is entitled to prove the condition of the weather on a specified day by introducing in evidence the records of the United States weather bureau for that date, which are prima facie evidence of the matters therein stated. *Bretsch v Plate*, 82 A.D. 399, 81 N.Y.S. 868, 1903 N.Y. App. Div. LEXIS 1174 (N.Y. App. Div. 1903).

United States Weather Bureau observations and records are prima facie evidence of the facts and circumstances stated therein. *Schleede v State*, 5 Misc. 2d 785, 160 N.Y.S.2d 686, 1957 N.Y. Misc. LEXIS 3323 (N.Y. Ct. Cl. 1957).

### **3. Authentication**

It is sufficient to authorize the reception in evidence of a copy of the records of the signal service department, that the officer in charge produces the record attested by his signature, and he verifies its correctness as a witness. *Schile v Brokhahus*, 80 N.Y. 614, 80 N.Y. (N.Y.S.) 614, 1880 N.Y. LEXIS 136 (N.Y. 1880).

## **Research References & Practice Aids**

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### **Jurisprudences:**

57 NY Jur 2d Evidence and Witnesses § 109. .

58 NY Jur 2d Evidence and Witnesses § 508. .

58A NY Jur 2d Evidence and Witnesses § 980. .

### **Law Reviews:**

Evidence symposium. 52 Cornell L.Q. 177.

### **Treatises**

#### **Matthew Bender's New York Civil Practice:**

Weinstein, Korn & Miller, New York Civil Practice: CPLR Ch. 4528, Weather Conditions.

#### **Matthew Bender's New York AnswerGuides:**

LexisNexis AnswerGuide New York Civil Litigation § 10.08. Admitting Record Under Exceptions to Admission Requirements.

#### **Warren's Weed New York Real Property:**

Warren's Weed: New York Real Property § 50.25.

#### **Matthew Bender's New York Evidence:**

1 Bender's New York Evidence § 118.05. Authentication of Public and Official Documents Dealing with Weather.

#### **Matthew Bender's New York Checklists:**

Checklist for Introducing Documents and Information into Evidence LexisNexis AnswerGuide New York Civil Litigation § 10.05.

### **Forms:**

Bender's Forms for the Civil Practice Form No. CPLR 4528:1.

LexisNexis Forms FORM 75-CPLR 4528:1.—Certification of Weather Report.

**Texts:**

3 New York Trial Guide (Matthew Bender) § 40.51.

**Hierarchy Notes:**

NY CLS CPLR, Art. 45

**Forms**

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**Forms**

**Certification of Weather Conditions**

[Add to copy of record of weather]

I \_\_\_\_\_, the meteorologist in charge of the United States Weather Bureau  
at \_\_\_\_\_, in which the foregoing record was made, do hereby certify that I  
have compared the attached copy of said record with the original record on file in this office, and  
that the attached copy is a correct transcript therefrom and of the whole of the original.

[Date]

\_\_\_\_\_  
[Print signer's name

below signature]

Meteorologist in charge

New York Consolidated Laws Service

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