

### **3.27. Death or Other Status of a Missing Person (CPLR 4527)**

**(a) Presumed death.** A written finding of presumed death, made by any person authorized to make such findings by the federal missing persons act is prima facie evidence of the death, and the date, circumstances and place of disappearance. In the case of a merchant seaman, a written finding of presumed death, made by the maritime war emergency board or by the war shipping administration or the successors or assigns of such board or administration in connection with war risk insurance is prima facie evidence of the death, and the date, circumstances and place of disappearance.

**(b) Death, internment, capture and other status.** An official written report or record that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead, or is alive, made by an officer or employee of the United States authorized by law of the United States to make it is prima facie evidence of such fact.

#### **Note**

This rule restates verbatim CPLR 4527 (Death or other status of missing person). See also EPTL 2-1.7 (Presumption of death from absence; effect of exposure to specific peril) which sets forth a presumption of death of a person who is absent for a continuous period of three years.

**Subdivision (a)** sets forth a hearsay exception for (1) a written finding of presumed death of a person made by a person authorized to make such a finding by the “Federal Missing Persons Act,” and (2) a written finding of a presumed death of a merchant seaman made by the Maritime War Emergency Board or the war shipping administration or their successors, in connection with war risk insurance.

The “Federal Missing Persons Act” was, however, repealed in 1966. While relevant provisions of that act now appear to exist in 5 USC § 5565 (applicable to a federal employee) and 37 USC § 555 (applicable to a member of a uniformed service), it remains for the New York courts to determine the successor federal statute and whether to deem CPLR 4527 applicable to that statute(s).

The written finding of death is “prima facie evidence” of the “death, and the date, circumstances and place of disappearance.” Notably, the statute makes the finding of death “prima facie evidence,” not the date of death; the date of disappearance is given “prima facie” effect and the date of disappearance may not be the date of death. (*See Matter of Cuthell*, 193 Misc 226 [Sup Ct, Westchester County 1948].)

In making the requisite finding of death “prima facie evidence,” the statute establishes an exception for such documents to the rule against the admission of hearsay.

While those documents are thus admissible and are “prima facie evidence” as indicated, evidence may be introduced to rebut the accuracy of the evidence or otherwise to affect the weight of the evidence. (*Cf. Knox Vil. Assoc. v Town of New Windsor*, 219 AD2d 585, 586 [2d Dept 1995] [“the defendants overcame the presumption of accuracy afforded to the ancient documents produced by the plaintiff (*see*, CPLR 4522 . . .)"]; *Berman v Golden*, 131 AD2d 416, 417 [2d Dept 1987] [indicating that the terminology “prima facie evidence” in CPLR 4522 (Ancient filed maps, surveys and records affecting real property) created a rebuttable presumption of the accuracy of the documents]. *See* Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C4518:9.)

**Subdivision (b)** sets forth a hearsay exception for an official report or record made by an officer or employee of the United States authorized by federal law to make the report or record that a person is missing, missing in action, interned in a neutral country, or beleaguered, besieged or captured by an enemy, or is dead or alive. When admitted, the record or report is prima facie evidence of the facts stated therein.