

## Second Circuit Upholds Dismissal in Meat Grinder Injury Case: Examining Liability Amidst Substantial Modification and Foreseeability Challenges

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In a case involving a plaintiff who lost his arm in a meat grinder, the Second Circuit recently affirmed the dismissal of his claims against the grinder's manufacturer on a motion for summary judgment due to substantial modification of the meat grinder by the plaintiff's co-workers. *Khusenov v. Prokraft Inc.*, 2024 WL 959620 (2d Cir. Mar. 6, 2024). Specifically, the Second Circuit determined there was no error in the district court's ruling that (1) plaintiff's expert testimony on foreseeability was properly excluded, (2) the meat grinder was adequately designed, (3) there was a substantial modification of the meat grinder, and (4) plaintiff's failure to warn claim was properly dismissed. *Id.* at \*2.

Plaintiff, a butcher's apprentice, sued manufacturer Prokraft after losing his arm in a Prokraft meat grinder working at a "Meat Store." *Id.* at \*1. Crucially, the grinder's safety guard was removed by plaintiff's fellow employees to speed up meat processing. *Id.* at \*2. Plaintiff sought to present expert testimony asserting that the guard's removal was "foreseeable," but the district court excluded that testimony. *Id.* at \*2-3. In affirming the district court's decision, the Second Circuit noted the expert provided only unsubstantiated opinions about the removal's foreseeability and did not attempt to ascertain the processing capabilities of the meat grinder or cite any studies to support the notion that the meat grinder would be unable to meet its advertised processing rates with the safety guard in place. *Id.* at \*2.

Additionally, the Second Circuit agreed with the district court's finding that the meat grinder was not defective when sold. *Id.* at \*3. The Second Circuit noted that the standard for "summary judgment based on substantial modification [of the meat grinder]" calls for defendant-manufacturers to show there was no design defect when the grinder was manufactured and sold. *Id.* at \*3. While plaintiff contended there was no conclusive evidence showing the guard that was present on the meat grinder as sold would have prevented his injury, the Second Circuit noted *both parties* presented expert testimony that the guard would have prevented plaintiff's accident. *Id.* Notably, plaintiff's expert testified it was a "'misuse' of the grinder to 'cut[ ] off the guard.'" *Id.*

Further, there was no dispute that plaintiff's fellow employees made the substantial modification of the grinder by removing the safety guard. *Id.* at \*4. The Second Circuit explained that "[m]aterial alterations at the hands of a third party which work a substantial change in the condition in which the product was sold by destroying the functional utility of a key safety feature, however foreseeable that modification may have been, are not within the ambit of a manufacturer's responsibility." *Id.* While plaintiff could have "defeat[ed] a substantial modification defense 'by showing that a product is purposefully manufactured to permit its use without a safety feature,'" there was no evidence showing the meat grinder was meant to be used without the guard. *Id.*

Finally, the Second Circuit also affirmed the district court’s dismissal of plaintiff’s failure to warn claim. *Id.* Nothing in the record suggested a failure to warn was the “proximate cause of the injury.” *Id.* Even though plaintiff argued “he never saw any stickers or warning labels on the meat grinder,” the Second Circuit pointed out that plaintiff should have understood through “general knowledge, observations, [and] common sense” that operating the grinder without the safety guard would be hazardous. *Id.* “[W]hen a ‘risk [is] well understood by the plaintiff, a warning would have made no difference . . . [a]nd the failure to warn [is] . . . not a cause of the harm.’” *Id.* (internal citations omitted).

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## Authors

[Julia Johnson](#)

[Zachary L. Alexander](#)

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[Julia Johnson](#)



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