

Playing Both Sides

While workers are harmed on Skanska projects in the U.S. South,
Skanska projects applauded in the U.S. North

“Skanska is one of the world's leading project development and construction groups. At Skanska, we build for a better society. From hospitals to stadiums, airports to corporate headquarters, and power plants to tunnels and bridges, the important buildings and infrastructure we create help heal, transport, entertain, and energize communities.”

These are the first words you’ll read when visiting Skanska USA website, where the company claims it is “building for a better society.” But is Skanska living up to this mission in its projects in the U.S. South? In many Southern states, Skanska has fallen short of its vision. Recent allegations of discrimination, wage theft, and unsafe working conditions abound on Skanska worksites in the southern states of the U.S., where workers have historically experienced the most repressive environment when asserting their labor rights.

Introduction

Even today in 2019, workers in the U.S. South must struggle for respect for their basic human rights, including the right to work and live in healthy and safe workplaces and communities, and more importantly, the freedom to join unions.

Skanska operates according to the ethos “when in Rome, do as the Romans do,” and as such its respect for workers’ international labor rights varies from country to country and region to region. In some, Skanska’s statements about “building a better society” ring hollow. The company’s enlightened rhetoric does not impact the states that brag of “union-free” environments” yet rank the worst in many indicators for living in the U.S. Skanska has not created better standards for workers in the U.S. South.

Unfortunately, in many cases, Skanska has embraced the Southern “race to the bottom,” hiring low-road subcontractors, capitalizing on an extremely anti-union culture and politics, and exacerbating the economic inequality that disproportionately impacts African-American workers, immigrants, and other vulnerable and marginalized groups.

According to its 2018 annual report¹, Skanska considers the following to be the greatest risks to the firm:

- ✓ Loss or lack of key employees
- ✓ Loss making projects or investments
- ✓ Ethical breaches
- ✓ Lack of control of business unit performance
- ✓ Accidents with multiple fatalities
- ✓ Macro-financial instability

This report highlights a bad side of Skanska – incidents that reflect a firm that may very well be tolerating and not managing its own identified high-level risks in particular areas of the U.S. In lieu of Skanska imposing more controls and reforming its practices of choosing low-road subcontractors, which shields Skanska from accountability for harm to workers, this presents material risk to the company. This report also highlights another side of Skanska – a company that takes the high road in other areas of the U.S., where the company is lauded with safety and other awards. It concludes with brief recommendations.

Continuing worker fatalities on Skanska I-4 development in Orlando, Florida

In the Florida Department of Transportation’s “I-4 Ultimate” highway development project, Skanska is both an investor and contractor as part of a joint venture (JV). This public private partnership (P3) operates as “I-4 Mobility Partners.”² When it was awarded in 2014, the \$2.3 billion I-4 Ultimate project was one of the largest P3s in the U.S.³ The project has faced severe difficulties. By 2018, \$1.4 billion of the project’s loans had been downgraded to negative, in part due to the failure to meet timeline deliverables.⁴

Unsafe working conditions have claimed the lives of at least five workers on the I-4 Ultimate project. Yet penalties have been minor. The U.S. Occupational Safety and Health Administration (OSHA) has fined Skanska or the JV a total of \$35,753.⁵ In 2016, 59-year-old Curtis Popkey was killed when a piece of steel fell and struck him.⁶ Around the same time, Marvin Franklin, only 34-years-old, was run over when exiting a portable restroom by a subcontractor’s dump truck. In February 2019, James Mills, a 59-year-old subcontracted employee from SGL Constructors, was killed when struck by a piece of steel equipment. Just a few day later when the project restarted, three workers were injured when their platform fell ten feet.⁷

In March 2019, not a month later, an ironworker employed by subcontractor Shelby Erectors, Michael Tolman, 56-years-old, was crushed and killed when a rebar cage fell on top of him.⁸



Pictured: Rebar cage suspended over project I-4 Ultimate Highway Expansion Project in FL prior to the accident



Pictured: The Same rebar cage after it collapsed.

Order to stop retaliation against workers who alleged racial discrimination on Skanska project in Memphis, Tennessee

Three workers were fired on a Skanska USA Building, Inc. project, Methodist Le Bonheur, in Memphis, Tennessee, after complaining of harassing behavior because of their race. Maurice Knox, a buck hoist operator employed by subcontractor C-1, Inc. Construction Company, was fired after enduring intolerable treatment on the worksite. Knox reported he endured harassment ranging from verbal racial slurs, racial jokes, and racially offensive language and profanity, to incidents in which coworkers threw the contents from a portable latrine on him.⁹ Two other African American buck hoist operators made similar reports.¹⁰ The U.S. Equal Employment Opportunity Commission (EEOC) found that workers were retaliated against by Skanska for bringing a complaint forward and engaging in protected activity.

The company responded by asserting the U.S. EEOC had a “heavy-handed approach to dealing with Skanska,” that Knox’s claims “should be dismissed because his complaint fails to allege sufficient facts to support the existence of a contract between Mr. Knox and Skanska.”¹¹ Later in December 2013, the U.S. EEOC asserted the workers’ “daily responsibilities and assignments were ‘directed by Skanska’. Skanska set their hours, collected their time sheets, taught them how to use the buck hoist, and required them to attend safety training,” and “Skanska employees supervised them.”

Skanska attempted to appeal the case and lost in the Sixth Circuit Court of Appeals in December 2013. Several years later, the U.S. EEOC settled with Skanska, signing a Consent Decree which “does not constitute a finding on the merits of the case or ... an admission by Skanska of the allegations in the Complaint” that gave \$95,000 to the Knox and the other two employees involved in the case, along with many other provisions. Against Skanska’s purported global policies and practices in other parts of the US, this case stands in stark contrast and the claims Skanska’s company representatives made in the “right-to-work”¹² state of Tennessee.

Workers allege wage theft and job misclassification on Skanska hotel project in Nashville, Tennessee

On a project building a thirty-three story J.W. Marriott hotel in downtown Nashville, Tennessee, Skanska procured a non-union contractor to provide workers for drywall work. Most of the workers were Spanish-speaking Latin American immigrants who did not know the requirements for wage and overtime pay until they sought union representation. According to the workers, the contractors failed to pay them for their overtime work through the project and entirely for the final weeks of the project. Wage theft is a growing problem in the U.S., especially in the construction industry. It is more common among residential construction workers, non-union employees, and immigrants who work as laborers or craft professionals. The workers’ claims in the case include:

- Improper job classification - workers were hired as independent contractors, thus depriving them of social security coverage, workers’ compensation coverage, unemployment insurance coverage, and other benefits related to proper classification as employees;
- No overtime pay – workers were not paid the federal, legally-required overtime wage of 150% their regular wage beyond the 40 hours per week;
- Improper wage deductions – workers’ wages were garnished for “required equipment” and “lodging.” The company promised hotel lodging for out-of-state workers and instead forced them to live with eight to ten workers sleeping in a single, small apartment;
- Wage theft – workers were not paid for their last two weeks of labor on the project;
- Wrongful dismissal – workers who protested their treatment were fired.

In May 2018, dozens of workers protested at the Skanska trailer on the building site in May 2018 demanding

their unpaid wages. Soon after, drywall workers in Nashville filed lawsuits in federal and state courts against Skanska, Mr. Drywall, First Class Interiors, and the J.W. Marriott project.¹³ The federal lawsuit has not been settled, between two subcontractors, in which Skanska is not named.¹⁴ Skanska and parties countersued



in state court, and as of March, the countersuits were being dismissed. Skanska settled the state lawsuit for 96 employees, 75 of which had been identified and paid in March 2019. Originally, the lawsuit sought \$1.6 million on behalf of the workers for unpaid wages.

Workers allege wage theft from Skanska in Washington, DC

Skanska USA Building (Skanska) hired Mario Garcia and several other individuals as carpenters for a variety of public schools and other public building construction projects in the District of Columbia. Mr. Garcia and his coworkers alleged, “Skanska¹⁵ avoided paying [them] prevailing wages and fringe benefits” and “often failed to pay [workers] overtime wages.” Garcia and his coworkers sued Skanska under the federal Fair Labor Standards Act (FLSA) and several municipal wage and labor statutes for their unpaid wages and fees in an amount that totals over \$2 million US dollars.¹⁶ This litigation is ongoing and is in mediation.

Skanska worker sues for alleged race and gender discrimination in Washington, DC

In October 2018, a former Skanska employee and African American woman of same-sex sexual orientation filed suit against the company for alleged violations of Title VII of the Civil Rights Act, and the District of Columbia’s Human Rights Act, for discrimination based on race and gender.¹⁷ She alleged she experienced adverse action by her employer after making complaints she was discriminated against with frequent insults and disparaging remarks about African American and Latino workers, and targeted with changes to her schedule and hours. The woman alleged she was denied a promotion – despite having years of experience at the company – and that she was

made to train a white, male, college intern who was hired into the position that she had sought. Her lawsuit seeks lost wages and punitive damages for experiencing discrimination at work. Litigation in this case is ongoing, and Skanska is seeking to dismiss the case.

In other cities, Skanska has union partnerships and receives awards for safety practices

On the other hand, in many northern U.S. states, Skanska has been lavished with awards for safety. The Department of Labor's (DOL) Occupational Safety and Health Administration's (OSHA) Voluntary Protection Program (VPP) awards "Star Sites" for exemplary occupational safety and health. In 2003, Skanska was granted Star Site status for the construction of Wyeth Pharmaceuticals Corporate Headquarters in Collegeville, Pennsylvania. This was followed by a second VPP Star Site award for Skanska's Schering-Plough Corporation project in Summit, New Jersey in 2007.¹⁸ In 2013, Skanska USA Civil received a great deal of positive press for its third VPP award (and first VPP award for a New York City agency) following completion of the Croton Water Treatment Plant project in the Bronx, New York.¹⁹

Two state-level occupational safety and health agencies have recognized Skanska for its safety record. In 2005, Oregon OSHA awarded Skanska USA Building's expansion of the St. Charles Medical Centers in Bend and Redmond with its Safety and Health Achievement Recognition Program (SHARP); not a single day of work was lost or restricted due to injury for that project in 2003.²⁰ Puerto Rico OSHA awarded its "OSHA Banner" to Skanska's Caribbean Operations for its Best Buy project in San Juan.²¹

Skanska, along with other stakeholders on its projects, have recently entered into a number of OSHA "Strategic Partnership Program" (OSPP) agreements. These partnerships are crafted at the beginning of a project, and aim to improve worker safety and health, establishing specific goals and strategies to achieve them. In May 2019, Skanska USA Building established one of these partnerships on the expansion of the Christiana Care Health System Women's and Infant Tower Renovation Project in Newark, Delaware.²²

In the Northeast U.S., where the Building Trades Unions have high density in the construction industry, fewer problems exist on projects and Skanska receives awards. For example, Skanska's biggest P3 in the U.S. covers Terminal B at New York LaGuardia Airport, due for completion in a few years, which is subject to a Project Labor Agreement (PLA) with the Building and Construction Trades of Greater New York.²³ Skanska also signed a PLA for the construction of the Fashion Outlets in Philadelphia, Pennsylvania, which is also supported by the local Building Trades Council.

Conclusion

Skanska's Supplier Code of Conduct²⁴ states,

“We recognize and respect collective bargaining agreements and our employees’ right to freedom of association and collective bargaining, where permissible by law. We promote good relations with labor organizations, trade unions, and workers’ representatives.”

Skanska's Code is contractually included in all of its agreements with suppliers and contractors and new suppliers are trained on the requirements of the Code. Skanska purportedly utilizes due diligence processes for suppliers, intermediaries, joint venture partners, sellers of land and buyers of real assets. The due diligence process covers areas such as supply chain, environment, safety, anti-corruption, competition law, and transparency regarding owners and financing, as well as sanctions. Skanska says it has controls based on risk for certain suppliers and violations have potential consequences that include, but are not limited to contract termination.

Skanska's International Framework Agreement signed with global union federation Building and Wood Workers International (BWI) in 2001 upholds International Labor Organization Conventions 87, 98, and 135 – or the right to organize – yet the company still has not embraced a consistent operational policy in the US that ensures the safety, health, and fair and equitable treatment of employees on Skanska worksites. Skanska can partner with experienced Building Trades Unions throughout the US and not only address the shortfalls in meeting the company's own ethical guidelines, but Skanska can lead, take the high road, and create lasting change for working families in vulnerable communities. In reality, with union jobs and consistent application of workers' rights across the US, Skanska could realistically live up to its claim of “building a better society.”

Skanska and Subsidiaries

Skanska North America

Skanska operates as Skanska USA Incorporated in the United States with subsidiary companies such as:

Skanska USA Commercial Development

Skanska USA Civil Inc.

Skanska Koch Inc.

Skanska Assurances Inc.

Spectrum Construction Group Inc.

Skanska has acquired several Contractors throughout the United States.

1. **Industrial Contractors Inc. – Evansville, Indiana 2011**
2. **PCI - 2011**
3. **BFW Construction - Midwest and Texas - 2004**
4. **E. L. Yeager Construction Co., Inc. – California - 2002**
5. **Baugh Construction – Portland and Seattle - 2000**
6. **Barclay White Northeast and Mid-Atlantic - 2000**
7. **Tidewater Construction Corporation - 1998**
8. **A.J. Etkin Construction Company – Michigan/Midwest 1998**
9. **Beacon Construction Company – Boston - 1997**
10. **Nielsons Inc. – Midwest Colorado Region - 1998**
11. **Beers Construction _ South-East - 1994**
12. **Sordoni Construction Co. – North East - 1990**
13. **Beacon Construction Company**
14. **Slattery Contracting Company**
15. **US. Karl Koch Erecting**

Skanska also partners with many local contractors for projects throughout the United States.

¹ <https://group.skanska.com/4961c9/globalassets/investors/reports--publications/annual-reports/2018/annual-and-sustainability-report-2018.pdf>

² Skanska Infrastructure Development is an equity investor with John Laing Investments, Ltd., and Skanska Civil, Lane Industries, and Granite Construction, are all contractors in a joint venture, with debt and loans provided by private banks and the U.S. DOT-TIFIA. See: https://scta.ca.gov/wp-content/uploads/2016/12/PFAL_I-4_CaseStudy-FINAL.pdf

³ <http://www.worldhighways.com/sections/key-projects/features/how-florida-paved-the-way-for-availability-payments-in-the-us/>

⁴ ENR. Skanska Books \$100M Write-Off On P3s As US Civil Chief Exits That Role: Richard Cavallaro has stepped down as unit CEO. October 24, 2018. See: <https://www.enr.com/articles/45637-skanska-books-100m-write-off-on-p3s-as-us-civil-chief-exits-that-role>

⁵ https://www.osha.gov/pls/imis/establishment.inspection_detail?id=1282794.015

⁶ ENR Southeast. Despite Safety Protocols, Third Worker Dies on I-4 Project in Orlando, Fla. March 21, 2018. See: <https://www.enr.com/articles/44193-despite-safety-protocols-third-worker-dies-on-i-4-project-in-orlando-fla>

⁷ ENR Southeast. Fourth Fatality on I-4 Revamp Adds to Skanska's P3 Woes. February 13, 2019. See: <https://www.enr.com/articles/46368-fourth-fatality-on-i-4-revamp-adds-to-skankas-p3-woes>. Note news articles say this "fatality involved worker error."

⁸ Pictures: <https://metroforensics.blogspot.com/2018/03/michael-tolman-56-ironworker-with.html>

⁹ See EEOC v. Skanska USA Building, Inc., filed in the U.S. District Court for the Western District of Tennessee. September 30, 2010.

¹⁰ Ibid.

¹¹ Ibid.

¹² The misleading »right to work« label refers to state laws that prohibit employers and unions from agreeing that all represented workers shall pay union dues if they are members, or pay agency fees to the union if they are not members. Under U.S. law, no worker can ever be compelled to become a union member. The U.S. Supreme Court decided in 2018 that, in public-sector employment, compulsory payment of agency fees by nonmembers who object to such fees is unconstitutional. The decision does not affect private-sector workers and unions.

¹³ See Case No. 18-1268-IV, Chancery Court of Tennessee, 20th Judicial District.

¹⁴ See Alvarado Martinez et. al. v. First Class Interiors et. al., U.S. District Court, Nashville Division, Case No. 3:2018cv00583 (June 25, 2018); Martinez et. al. v. Skanska USA Building et. al., Chancery Court, Davidson County, Tennessee, Case No. 18-1268-IV, November 20, 2018.

¹⁵ See Case No. 1:17-cv-00629, Menjivar Garcia et al v. Skanska USA Building, Inc. U.S. District Court of Washington, D.C. Other Plaintiffs include P.O.S.T. LLC and Alvin Smith, and Movant was Foundation for Fair Contracting.

¹⁶ See Garcia v. Skanska, and <https://law.justia.com/cases/federal/district-courts/district-of-columbia/dcdce/1:2017cv00629/185655/32/>

¹⁷ See Case No. 1:18-cv-03344, Thomesena Kenion v. Skanska USA Building, Inc. et al, U.S. District Court for Maryland.

¹⁸ Skanska Receives Highly Coveted OSHA Award for Excellence in Safety. <https://www.usa.skanska.com/who-we-are/media/press-releases/50018/Skanska-Receives-Highly-Coveted-OSHA-Award-for-Excellence-in-Safety->

¹⁹ OSHA Honors Skanska USA Civil with Highest Safety Recognition. <https://www.usa.skanska.com/who-we-are/media/press-releases/50629/OSHA-Honors-Skanska-USA-Civil-with-Highest-Safety-Recognition->

²⁰ See pg. 13 of Oregon OSHA's First Quarter 2005 newsletter. Found here:

<https://osha.oregon.gov/pubs/newsletters/resource/print/2850-2005-03.pdf>

²¹ Skanska's Project Site in Puerto Rico Receives OSHA Recognition. <https://www.usa.skanska.com/who-we-are/media/press-releases/46156/Skankas-Project-Site-in-Puerto-Rico-Receives-OSHA-Recognition>

²² <https://www.osha.gov/news/newsreleases/region3/05082019>

²³ <https://www.nydailynews.com/new-york/union-laborers-handle-work-4b-laguardia-project-article-1.3007192>

²⁴ <https://group.skanska.com/about-us/our-code-of-conduct/>