



Title II Implementation in the Mid-Atlantic Region: 2010 – 2015 Case Law Review

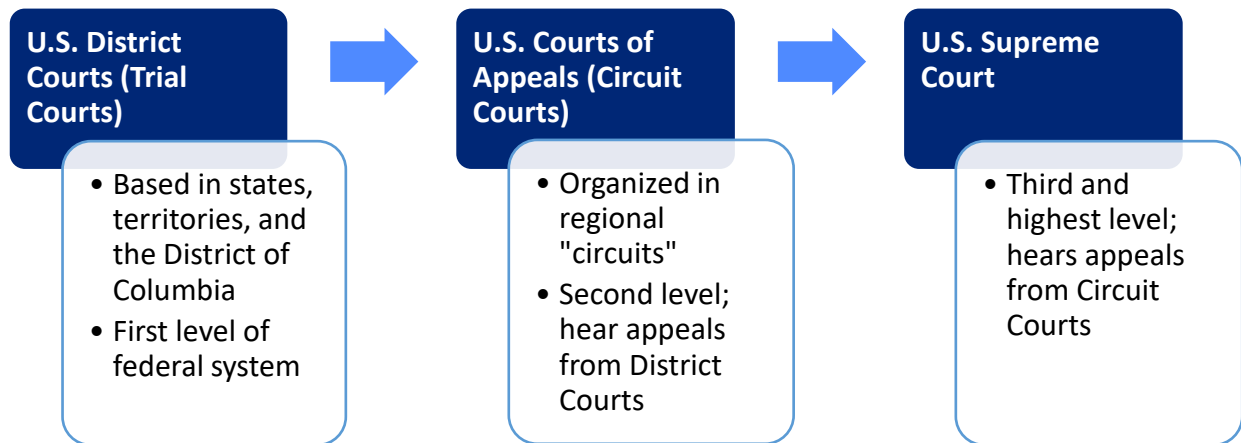
The Americans with Disabilities Act (ADA) is a civil rights law designed to address discrimination against individuals with disabilities in a variety of settings. Title II of the ADA covers all of the programs, services, and activities of state and local governments (also called public entities). In addition to prohibiting intentional discrimination, Title II requires public entities to take a number of proactive steps to ensure that people with disabilities have equal opportunities to access and participate in public programs and activities. Some of the core provisions of Title II include:

- Making reasonable modifications in policies, practices, and procedures
 - Common examples: allowing individuals with disabilities to be accompanied by service animals in locations where animals are typically not allowed, giving extended time for a person with a developmental disability to fill out and submit paperwork, or taking steps to ensure that tickets for accessible seating locations in a stadium are kept available for individuals who need them until other seats are sold
- Providing auxiliary aids or services needed to communicate effectively with people who have hearing, vision, or speech disabilities
 - Common examples: providing accessible electronic documents and verbal descriptions of visual elements for a student who is blind, sign language interpreter services to communicate with a patient who is deaf, or an assistive listening device to a theater patron who is hard of hearing
- Ensuring that newly constructed or altered buildings and facilities are accessible, and taking measures to ensure that people with disabilities can access programs and services that are offered in older, inaccessible facilities

As part of our research related to the implementation of Title II of the ADA, we reviewed lawsuits filed against state or local government agencies (not including employment-related cases) during the period between 2010 and 2015 in the mid-Atlantic region (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, and the District of Columbia).

The Federal Courts

The federal court system has three levels: district courts, circuit courts, and the Supreme Court. District courts are based in states, territories, and the District of Columbia. Some states have one district court, and many larger states have more than one. These courts are the starting point for federal cases, and are sometimes referred to as trial courts. Circuit courts, or courts of appeals, are the second level of the system. These courts encompass many districts, often across multiple states. The Supreme Court is the final court of appeals for any federal case.



Lawsuits are often multi-layered and complex. Some include multiple plaintiffs or defendants and various claims, or allege violations of multiple laws (e.g., the ADA, Section 504 of the Rehabilitation Act [which is triggered by the receipt of federal financial assistance], the Fair Housing Act, state laws) and/or the Constitution. Parties do not always simply “win” or “lose” a whole case; courts often dissect allegations and defenses in great detail, parsing decisions based on the evidence presented, legal principles, technicalities, precedents, and other factors. Many court rulings and orders are a “mixed bag,” with plaintiffs and defendants winning one point and losing another, especially in the initial stages in the lower courts. Lower courts often set the stage for jury trials, but sometimes make decisions that end lawsuits without further proceedings. Lawsuits are also often settled by the parties after preliminary rulings indicate how the court is leaning on certain issues.

The Cases

Twenty-seven (27) cases¹ were filed during the relevant period, and though this is a relatively small number of cases, we believe our review has revealed some valuable information. We will first discuss program areas that generated a significant proportion of the cases, then identify common problems that appear to crop up across a broad range of program areas, and conclude with takeaways and questions that may call for further consideration and research.

Our purpose for this brief is to identify common issues that may inform training, technical assistance, and materials development efforts to support the successful implementation of Title II in our region. We are not necessarily focused on whether plaintiffs or defendants prevailed in these specific cases, but on identifying the kinds of situations that present challenges for individuals with disabilities and public entities.

Programs, Services, and Activities

Justice Systems

Of the cases filed, ten (10)² implicated various aspects of state and local government justice systems (law enforcement, jails and prisons, and court systems). It seems significant that more than a third of the total cases filed revolved around these challenging interactions and relationships between individuals with disabilities and officials who wield a tremendous and often very personal type of power and authority in society.

Three (3) of the cases made claims related to effective communication for individuals with hearing or vision disabilities:

- *Bonnette v District of Columbia Court of Appeals* (an individual with a vision disability claimed that the Court failed to provide her with an effective auxiliary aid in the form of her preferred screen-reading technology to take the bar examination);
- *Paulone v City of Frederick, Maryland* (a deaf individual claimed that the city, county, and state all failed to provide needed auxiliary aids and services, particularly sign language interpreter services, during her post-arrest detention, court proceedings, and court-ordered activities);
- *Pierce v District of Columbia* (a deaf individual claimed that he was incarcerated in the District's Correctional Treatment Facility for 51 days with no effective means to communicate with anyone around him, including prison officials, doctors, counselors, and teachers, and that he was placed in solitary confinement in retaliation for his repeated requests for sign language interpreter services).

All of these individuals' claims were at least partially successful, and *Bonnette* and *Pierce* achieved fairly resounding success in the district court. In *Bonnette*, the court granted an injunction, ordering the defendants to provide the examination with the plaintiff's preferred screen-reading technology.

In *Pierce*, the court dispatched the defendant's arguments with some indignation, going so far as to call the defendant's "suggestion" that the plaintiff had not actually requested interpreter services "preposterous." The court noted that "testimony from the District's own employees confirms that Pierce repeatedly asked for an interpreter" and "contemporaneous log book entries, handwritten notes, and memoranda all document Pierce's persistent efforts to seek and obtain an ASL [American Sign Language] interpreter." In any event, the court rejected the defendant's claim that their only duty was to respond to specific requests. The court said prison officials have a duty to proactively determine if inmates with known or obvious disabilities have needs, and that the defendant's "willful blindness" to the plaintiff's needs "plainly amount[ed] to deliberate indifference," entitling the plaintiff to compensatory damages.



The plaintiffs in two (2) of the cases challenged the conditions of their confinement in detention or correctional facilities, and one specifically alleged that he was injured as a result of being placed in an inaccessible facility. The plaintiff in *Lee v Corrections Corporation of America*, a man with multiple physical disabilities who walked with a prosthetic leg, claimed he was seriously injured when he was compelled to descend a flight of stairs after being transferred to an inaccessible facility. The plaintiff in *Bell v Lindsay* claimed he was “forced to sleep on the floor in an intake area without a toilet or a sink, and that despite notifying officials of his serious spinal-related injuries and pain, he was not seen by a medical professional” until he had been incarcerated for more than three weeks.

Zoning, Licensing, and “NIMBY”

Four (4) cases alleged that local zoning or licensing requirements were designed or applied in order to restrict where individuals with disabilities could live or receive services. These cases follow a long history of claims that local zoning and licensing authorities, sometimes in response to community pressure, have sought to keep people with disabilities out of residential neighborhoods or away from central community areas and business districts. Many of these cases, often referred to as “NIMBY” (Not In My Back Yard) cases, also claim violations of the Fair Housing Act where the issue is related to the establishment of group homes, halfway houses, and other types of small congregate residences. These residential programs, which seek to provide various types of services or treatment in community-based settings rather than in large institutions, are often designed for small groups of individuals with disabilities, such as adults with intellectual disabilities or mental health conditions, or those recovering from substance abuse disorders.

Two (2) of the cases in this category were related to the location of residential treatment facilities for individuals recovering from substance abuse disorders (*United States v City of Baltimore, Maryland* and *McKivitz v Township of Stowe, Pennsylvania*) and two (2) were related to non-residential treatment facilities (*CC Recovery, Inc. v Cecil County, Maryland* and *RHJ Medical Center, Inc. v City of DuBois, Pennsylvania*).

An additional two (2) cases, though they did not involve zoning or licensing, made claims related to the entrenched practice of separating individuals with disabilities from the larger community. The plaintiffs in *Day v District of Columbia* and *Benjamin v Department of Public Welfare of the Commonwealth of Pennsylvania* argued that they were unnecessarily institutionalized and prevented from receiving services and supports that would have enabled them to live in community-based settings. The plaintiffs in *Day* described the nursing facilities in which they were compelled to live in order to receive services as “segregated” facilities that “resemble hospitals and secure facilities,” where there is “little, if any, privacy” and “residents may sit idle for most of the day, with little or nothing to do.”



The courts in these two cases, though they wrestled with a number of details and technicalities, generally found that the defendants' plans and actions were insufficient to comply with the integration mandates of the ADA and Section 504 of the Rehabilitation Act, as well as the precedent of the Supreme Court's 1999 ruling in *Olmstead v L.C.*, in which the Court stated that "unjustified institutional isolation of persons with disabilities is a form of discrimination" that violates individual rights, and further "perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life."

Common Issues

Reasonable Modifications to Policies, Practices, and Procedures

Thirteen (13)³ of the cases included allegations that public entities failed to make necessary and reasonable modifications to policies, practices, and procedures. This was the most common ADA-specific allegation among the cases, and it surfaced across a range of program areas, including educational or other activities in schools from primary to post-secondary levels, social services, transportation, and justice-related activities, including arrests.

The modifications that individuals requested were varied; a few examples include:

- An individual asked for additional time to complete a court-ordered alcohol education program, because she had difficulty locating a program that would provide sign language interpreter services (*Paulone*).
- A family requested placement in a non-communal emergency shelter setting to accommodate a family member with severe disabilities which made her especially susceptible to infections and communicable diseases (*Hunter v District of Columbia*).
- A parent of a disabled child requested that her child's after-school transportation service deliver him to a day care center located outside the school's attendance boundaries, because it was the only day care center in the area which could meet the child's medical needs (*S.K. v Allegheny School District*).
- A college student asked security personnel to drive her from her vehicle to classroom buildings while the campus was undergoing construction and accessible parking was not available (*Adams v Montgomery College*).
- A passenger with a service dog asked railroad employees to relocate luggage stored in mobility seating areas, so that she and her service dog would have sufficient space (mobility seating areas, which are designed to accommodate passengers traveling in wheelchairs, have more open space than typical seating areas) (*Levine v Amtrak*).

Public Programs Operated by Private Entities

It is not uncommon for public agencies to engage private contractors to provide services or operate programs on their behalf. Five (5) of the lawsuits we reviewed were generated by, or included, allegations that private entities discriminated against individuals with disabilities in



the operation of public programs, or components of public programs, including public housing facilities and homeless shelters (*Hunter*), prisons (*Lee*), court-ordered educational programs (*Paulone*), testing for professional licensing (*Bonnette*), and access to lottery outlets (*Equal Rights Center v District of Columbia*).

These cases illustrate the difficulties that can face both public entities and individuals with disabilities when private contractors operate public programs. Public entities may be challenged to manage contracts and ensure that contractors provide services in compliance with the provisions of Title II, and individuals with disabilities and their advocates may be challenged to identify responsible parties and effectively address problems they encounter. For example, in *Lee*, the plaintiff was incarcerated in a prison operated by a private entity on behalf of the District of Columbia Department of Corrections. The lawsuit, however, named only the private corporation as the defendant, and alleged a violation of Title II. That claim was dismissed entirely because a private entity is simply not covered by Title II.

Failure to Train

Six (6)⁴ of the cases included allegations that public agencies failed to adequately train their employees, resulting in violations of the plaintiffs' rights. Notably, five (5)⁵ of these cases involved law enforcement interactions where the plaintiffs also claimed their constitutional rights were violated. "Failure to train" claims must generally show that the covered agency's specific policy or practice evidences a "deliberate indifference" to civil rights, and was the cause of, or reason for, its employees' actions. In other words, a plaintiff cannot simply state that an employer is responsible for the actions of its employees, but rather that the employer maintains a policy or practice that allows (or even encourages) violations of the law.

Title II of the ADA only specifically requires covered entities to train their employees in a few particular contexts (e.g., transportation services). Title II does not generally require public entities to train their employees on the provisions of the ADA, how to interact with people with disabilities, or how to respond to requests for things like policy modifications or auxiliary aids or services for effective communication (though the U.S. Department of Justice notes that "it would be appropriate for public entities to evaluate training efforts because, in many cases, lack of training leads to discriminatory practices, even when the policies in place are nondiscriminatory").⁶

Constitutional Claims

Eleven (11)⁷ of the cases (including six⁸ of the ten justice-related cases) alleged violations of constitutional rights, especially the Fourth, Eighth, and Fourteenth Amendments, which guarantee the right to be free of unreasonable search and seizure (including excessive force) or cruel punishment, and to enjoy due process and equal protection under the law.



Several of the cases illustrate how tragically these interactions can turn out when they go wrong, as well as how a plaintiff can lose an ADA case but still win a point that might lead to a positive outcome.

The plaintiff in *Shultz v Carlisle (Pennsylvania) Police Department* alleged violations of Title II of the ADA and the Constitution because of the way he was treated after he experienced a seizure and fell to the floor in a restaurant. Patrons, unsure whether Mr. Shultz was experiencing a seizure or was intoxicated, called for emergency assistance. Two police officers, as well as emergency medical services personnel, responded to the scene. By that time, Mr. Shultz was conscious and calm, sitting up at a table, but “largely unresponsive.” The police officers and emergency medical personnel tried to convince him to get on a gurney and allow himself to be transported to a hospital, but he refused and tried to leave. The police officers, believing it might be unsafe for Mr. Shultz to leave alone, tried to physically restrain him, and in the process, one of the officers “tasered” Mr. Shultz six times; he was then handcuffed and transported to the hospital.

The court, after viewing the tapes from the restaurant security cameras which had recorded the incident, noted that there was evidence “by which a jury could conclude that defendants' use of force against plaintiff was unreasonable.” The tapes showed “that [the officer] may have tasered plaintiff when he represented no threat to anyone,” under which circumstances, a “reasonable officer ... would know that the use of physical force that included repeatedly tasered a subject who had already been subdued and did not pose any threat violated the plaintiff's rights.” However, the court did not find sufficient evidence that the officer acted as he did *because the plaintiff had a disability*. This tipped the scales against the plaintiff in terms of the ADA. The court granted the defendants’ motion for summary judgment in relation to the ADA claims (essentially dismissing them), but denied it in relation to the constitutional claims (allowing them to survive).

A similar case, *Mohney v Commonwealth of Pennsylvania*, involved an incident when state troopers responded to a home for reasons that were unclear. Mr. Mohney, an individual with a history of mental illness and suicide attempts, had doused himself with gasoline. When he failed to respond to an order from the troopers, one of them fired his taser weapon, which, due to the gasoline, caused Mr. Mohney to “burst into flames, which engulfed [him] from head to toe.” He died hours later.

This case was brought by the administrator of his estate, alleging a number of violations of the ADA and the Constitution. The plaintiff alleged that the troopers had reason to know about Mr. Mohney’s history because of previous incidents, and responded to the situation more aggressively than necessary, as Mr. Mohney was not armed, violent, or threatening when he was tasered.



The plaintiff overcame several defenses proffered by the state. The court rejected the argument that the state was immune from the lawsuit under the Eleventh Amendment, and held that the ADA's requirement to make reasonable modifications for individuals with disabilities could apply to police interactions and making arrests. However, the court did not find the plaintiff's evidence sufficient to establish that Mr. Mohney had a disability or that the troopers knew or thought he did.

Other plaintiffs have been more successful in making their ADA cases (along with addressing potential constitutional issues), in some cases because their disabilities were obvious or well known. The case of *Broadwater v Fow* involved an incident between an individual (Mr. Broadwater) and several Pennsylvania State Police (PSP) troopers (Fow, a corporal and supervisor with the PSP, was one of several defendants in the case). A nurse who worked with Mr. Broadwater called the PSP and asked them to take Mr. Broadwater to a hospital for involuntary evaluation. The nurse explained that he "suffered from manic depression and was potentially dangerous." Cpl. Fow directed three other troopers to go to the home. According to Mr. Broadwater, he agreed to go with the troopers after he put his dogs inside his house, but one of the troopers tasered him and he was eventually handcuffed and put in the back of a police vehicle. Cpl. Fow and a PSP investigator arrived, and things deteriorated further. The troopers allegedly tasered, pepper sprayed, and punched Mr. Broadwater repeatedly in the face while he was in handcuffs. Numerous stitches were required to repair his wounds.

The defendants didn't try to argue that the plaintiff didn't have a disability (the information they had from the nurse, together with the fact that Cpl. Fow, on his way to the scene, referred to the plaintiff as a "retard" over the police radio, and as "Mr. Crazy" in the report he submitted to station command staff, painted a fairly clear picture of the defendants' knowledge and perceptions). The defendants did, however, argue that the plaintiff did not allege disability-based discrimination. The court easily dispatched the argument. "To the contrary," said the court, "Broadwater specifically alleges that the Commonwealth and the PSP 'failed to properly train troopers to have peaceful encounters with mentally and physically disabled persons and failed to establish a proper policy for handling such encounters....'"

Finally, let us turn to an example of a tragic case that did, at least in time, lead in a more positive direction.

The case of the *Estate of Saylor v Regal Cinemas* involved three off-duty Frederick County, Maryland Deputy Sheriffs who were working as security guards for a local mall where a Regal Cinemas theater was located. Robert Ethan Saylor, a young man with Down syndrome, went to a movie with a caregiver. When the movie ended, Mr. Saylor wanted to see it again and did not want to leave the theater. His caregiver called his mother, who said she would come to the theater, and advised the caregiver to simply give Mr. Saylor a few moments to calm down. In the meantime, the theater manager called for the assistance of the mall security guards, who

spoke with the caregiver. According to the caregiver, she told the deputies about Mr. Saylor's disability and that his mother was on her way. The caregiver asked the security guards to wait, and advised them Mr. Saylor might "freak out" if they touched him. The deputies instead approached him and ended up forcibly dragging him from the theater and handcuffing him. In the struggle, Mr. Saylor and the deputies fell to the floor, Mr. Saylor's larynx was fractured, and he suffocated to death.

Like other cases we have reviewed, this one made claims under both the ADA and the Constitution; specifically, that the deputies refused to reasonably modify their procedures in light of the plaintiff's disability (e.g., waiting until Mr. Saylor's mother arrived, as requested by the caregiver) and then proceeded to use excessive force in removing him from the theater. Because the status of off-duty officers reverts to on-duty when law enforcement actions are taken (such as arrests), the deputies were responsible for complying with applicable requirements and restrictions. The court refused to grant most of the state's and the deputies' motions to dismiss the claims against them (the court did grant Regal's motion to dismiss a negligence claim, noting that to expect the theater manager to foresee that calling for the assistance of the deputies would result in Mr. Saylor's death would require "a degree of clairvoyance ... that the law does not impose").

There was also a claim in this case that the state had failed to adequately train its officers, contributing to the tragic outcome of the incident. In response, the state provided its manual on "Investigation of Persons with Mental Illness." The court found it "only marginally relevant" to individuals with Down syndrome or other developmental disabilities, as well as insufficient to show that the policy was put into practice or that any type of training was actually provided to officers. The court did, however, point out that the officers in this case did not follow at least some of the guidelines (which included avoiding moving into the person's comfort zone, or touching the person unless essential to safety). "Thus," said the court, "should these guidelines be considered relevant to individuals with developmental disabilities, the argument could be made that the Deputies were not trained to follow or simply failed to follow" them when dealing with Mr. Saylor.

Following this case, Mr. Saylor's family and many others advocated for the state to improve training for law enforcement officers, and the Maryland state legislature passed a bill in 2015 to establish the "Ethan Saylor Alliance," which works to develop and provide training materials and programs that include the participation of individuals with developmental and intellectual disabilities.

Takeaways and Points to Ponder

- Despite indications of progress like the ones that grew out of the *Saylor* case, it seems clear that many law enforcement and other justice-related agencies may benefit from additional training in how to interact effectively with individuals with a variety of types



of disabilities, including those who may be experiencing confusion, illness, etc., but who are not violent or threatening.

- State and local government agencies, as well as people with disabilities and their advocates, may benefit from additional information and training on how to address programs conducted by private contractors on behalf of public entities.
- Public agencies' employees at all levels may benefit from ADA training that is geared toward their roles, with emphasis on fundamental concepts of equity, as well as recognizing and responding to requests for policy modifications, auxiliary aids or services for effective communication, and measures to achieve access to programs and services.
- There may be value in conducting additional research on the types of materials and methods that may be effective in reaching various audiences, facilitating advancements in knowledge and understanding, and addressing entrenched biases and the practices that result from it.

¹ *Equal Rights Center v District of Columbia* (U.S. District Court, District of Columbia; 2010)
McKivitz v Township of Stowe (U.S. District Court, Western District of Pennsylvania; 2010)
RHJ Medical Center, Inc. v City of DuBois (U.S. District Court, Western District of Pennsylvania; 2010)
Shultz v Carlisle Police Department (U.S. District Court, Middle District of Pennsylvania; 2010)
Adams v Montgomery College (U.S. District Court, District of Maryland; 2011)
Benjamin v Department of Public Welfare of the Commonwealth of Pennsylvania (U.S. District Court, Middle District of Pennsylvania; 2011)
Bonnette v District of Columbia Court of Appeals (U.S. District Court, District of Columbia; 2011)
Mohney v Commonwealth of Pennsylvania (U.S. District Court, Western District of Pennsylvania; 2011)
Paulone v City of Frederick (U.S. District Court, District of Maryland; 2011)
Day v District of Columbia (U.S. District Court, District of Columbia; 2012)
United States v City of Baltimore (U.S. District Court, District of Maryland; 2012)
Broadwater v Fow (U.S. District Court, Middle District of Pennsylvania; 2013)
Glover v City of Wilmington (U.S. District Court, District of Delaware; 2013)
Lamberson v Commonwealth of Pennsylvania (U.S. District Court, Middle District of Pennsylvania; 2013)
Smith v Henderson (U.S. District Court, District of Columbia; 2013)

Azam v District of Columbia Taxicab Commission (U.S. District Court, District of Columbia; 2014)

CC Recovery, Inc. v Cecil County, Maryland (U.S. District Court, District of Maryland; 2014)

Estate of Saylor v Regal Cinemas, Inc. (U.S. District Court, District of Maryland; 2014)

Hunter v District of Columbia (U.S. District Court, District of Columbia; 2014)

Innes v Board of Regents of the University System of Maryland (U.S. District Court, District of Maryland; 2014)

Lee v Corrections Corporation of America (U.S. District Court, District of Columbia; 2014)

Young v District of Columbia Housing Authority (U.S. District Court, District of Columbia; 2014)

Bell v Lindsay (U.S. District Court, Eastern District of Pennsylvania; 2015)

Class v Towson University (U.S. District Court, District of Maryland; 2015)

Levine v Amtrak (U.S. District Court, District of Columbia; 2015)

Pierce v District of Columbia (U.S. District Court, District of Columbia; 2015)

S.K. v North Allegheny School District (U.S. District Court, Western District of Pennsylvania; 2015)

² *Shultz, Bonnette, Mohney, Paulone, Broadwater, Glover, Saylor, Lee, Bell, Pierce*

³ *McKivitz, Adams, Benjamin, Mohney, Paulone, Day, United States, Glover, Saylor, Hunter, Class, Levine, S.K.*

⁴ *Shultz, Mohney, Broadwater, Glover, Azam, Saylor*

⁵ *Shultz, Mohney, Broadwater, Glover, Saylor*

⁶ Title II Regulations (28 Code of Federal Regulations Part 35; Nondiscrimination on the Basis of Disability in State and Local Government Services)

⁷ *McKivitz, RHJ Medical Center, Shultz, Mohney, Broadwater, Glover, Smith, Azam, CC Recovery, Saylor, Bell*

⁸ *Shultz, Mohney, Broadwater, Glover, Saylor, Bell*