

RESOLUTE INDEX

BANKRUPTCY | RECEIVERSHIP

Fall 2020
Edition

This edition of the Resolute Index examines the continued impact of the coronavirus pandemic on middle market (\$10 MM to \$200 MM) businesses in Arizona and the Rocky Mountain West region.

Keep reading for insights into Arizona Workout Filings, Arizona unemployment, in-depth bankruptcy analysis across the Rocky Mountain West, and a national overview of pandemic-related business interruption claims.

Arizona State of the Workout Environment

Includes business filings with \$1MM+ in liabilities

WORKOUT TREND

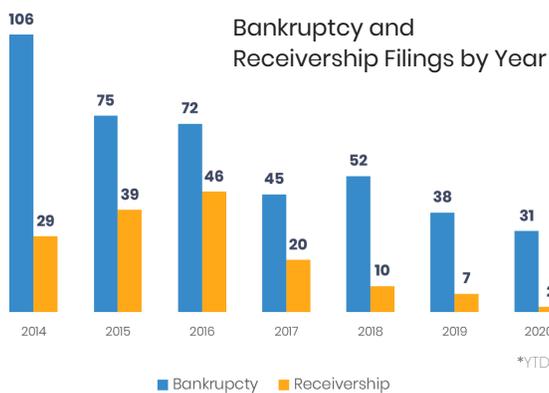
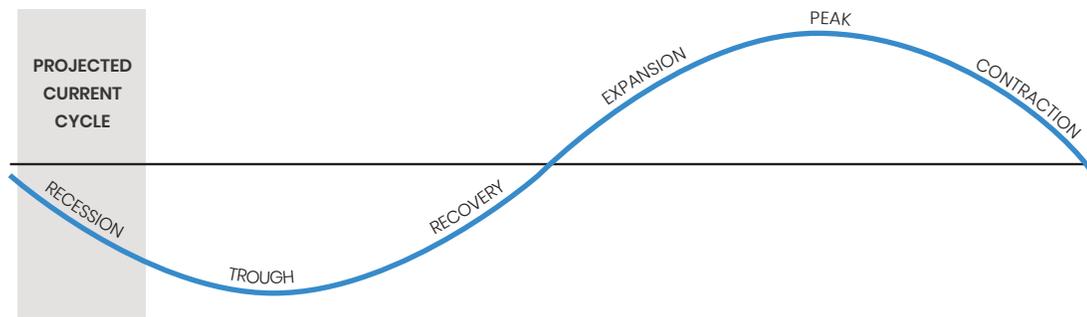


BANKRUPTCY

13 
Q3 Since Q2

RECEIVERSHIP

1 
Q3 Since Q2



TAKEAWAYS

Receiverships are down significantly from previous years. This is unsurprising, as many lenders are giving borrowers leeway on their covenants due to the impact of the pandemic.

As the staff at Resolute works closely with lenders, we've found that many financial institutions are being more flexible than usual with pursuing collection of delinquent payments.

We predict workout filings will jump in 2021, as lenders are forced to make difficult decisions about struggling assets.

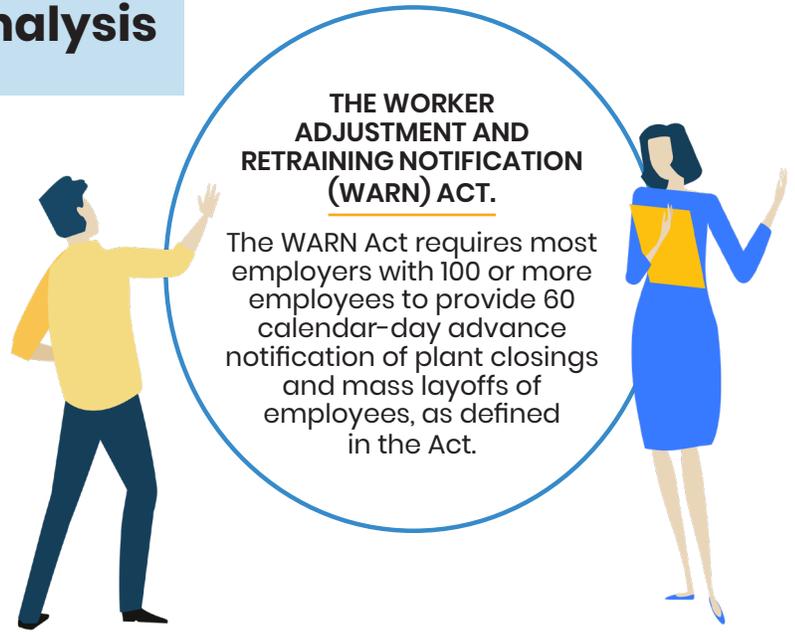
The total number of middle market bankruptcy filings in calendar year 2020 may end up similar to the number of filings in 2019. Four out the previous five years saw substantial filing activity in Q3 and Q4. Filings in the first three quarters of 2020 have reached 82% of total 2019 filings. With added instability related to the pandemic, all signs point to a continued increase in bankruptcy filings.

Quarterly Breakdown of Bankruptcy Filings



Arizona Unemployment Analysis

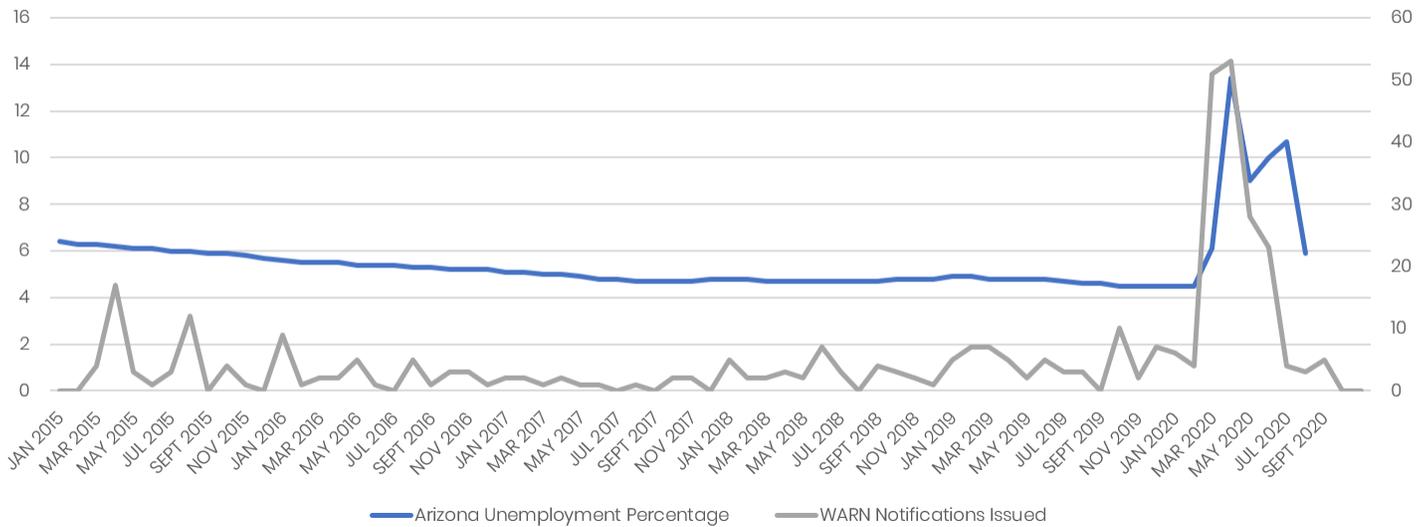
An important way to track the status of the economy is to look at unemployment numbers. Our analysis of statewide unemployment numbers is also matched against WARN Act notices filed in the State of Arizona. While much media attention has been paid to the devastation that small businesses have experienced due to the pandemic, equally important is the number of larger companies impacted. If larger companies – which generally have more access to capital and greater ability to maintain their covenants – are continuing to file WARN Act notices, it's a sign that distress in the marketplace is widespread.



THE WORKER ADJUSTMENT AND RETRAINING NOTIFICATION (WARN) ACT.

The WARN Act requires most employers with 100 or more employees to provide 60 calendar-day advance notification of plant closings and mass layoffs of employees, as defined in the Act.

Unemployment % Compared to WARN Notifications



QUARTERLY WARN ANALYSIS

As we look to Q4 and into 2021, what can we expect in terms of layoffs? One way to hypothesize about the future is to analyze which quarter shows the most WARN Act notices. During the past 10 years, most WARN Act notices have been issued in Q2, even if one disregards the outlier year of 2020.

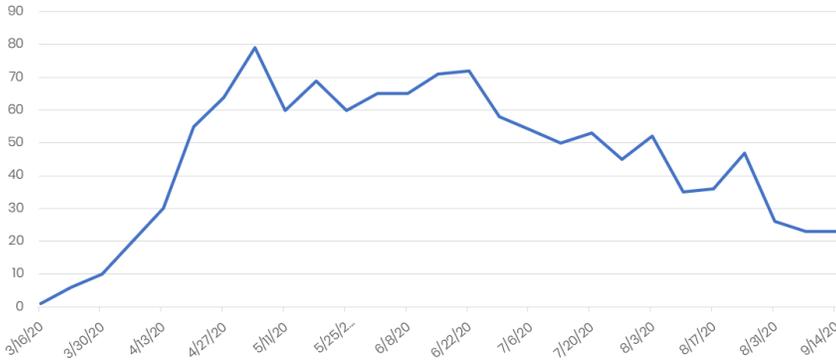
It's difficult to predict how the U.S. presidential election and the continuing effects of COVID-19 will impact unemployment. Based solely on historical data, if unemployment is to spike again, it would be most likely to occur in Q2 2021.



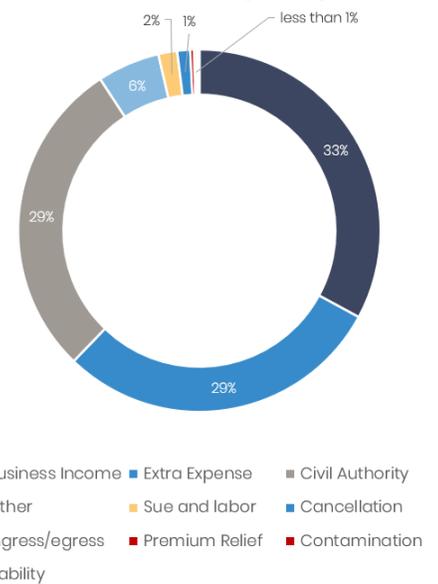
Business Interruption Claims Analysis

Reflects filings across the United States, as of September 14, 2020

Pandemic-related Property Casualty Insurance Coverage Litigation
- Filings Per Week



Insurance Coverage Sought



RESOLUTE INSIGHTS

As many industries have faced unprecedented hardship in 2020, some businesses are turning to their insurance policies to recoup losses. The most prominent question emerging in this process is whether commercial insurance policies cover business interruption losses.

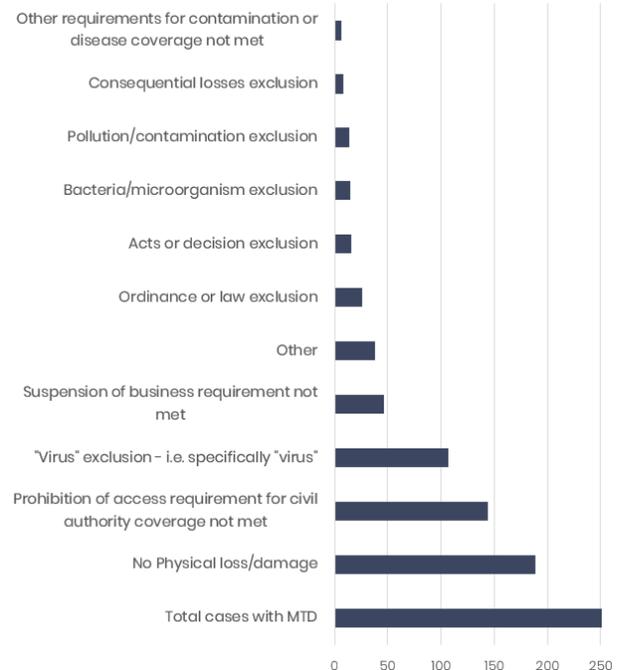
Insurers say covering pandemic-related claims is impossible. Dr. Michel Léonard, vice president and senior economist at the Insurance Information Institute recently said, "If insurers nationwide had to pay business interruption policy claims ... it could cost the industry each month anywhere from roughly \$150 billion to nearly as high as \$380 billion. Pandemic-caused losses are excluded from standard business interruption policies because they impact all businesses, all at the same time."

However, many disagree. "Businesses who have purchased business interruption insurance in good faith and are forced to close their doors because of a major event and through no fault of their own deserve to have their claims honored," said Rep. Mike Thompson (D-Calif.) during the announcement of his Business Interruption Insurance Coverage Act. His bill aims to "ensure businesses who purchase interruption insurance won't get their claims denied because of major events, such as the coronavirus pandemic, public safety power shutoffs or evacuations." Thompson is not alone, as similar protective legislation has been proposed in several other states.

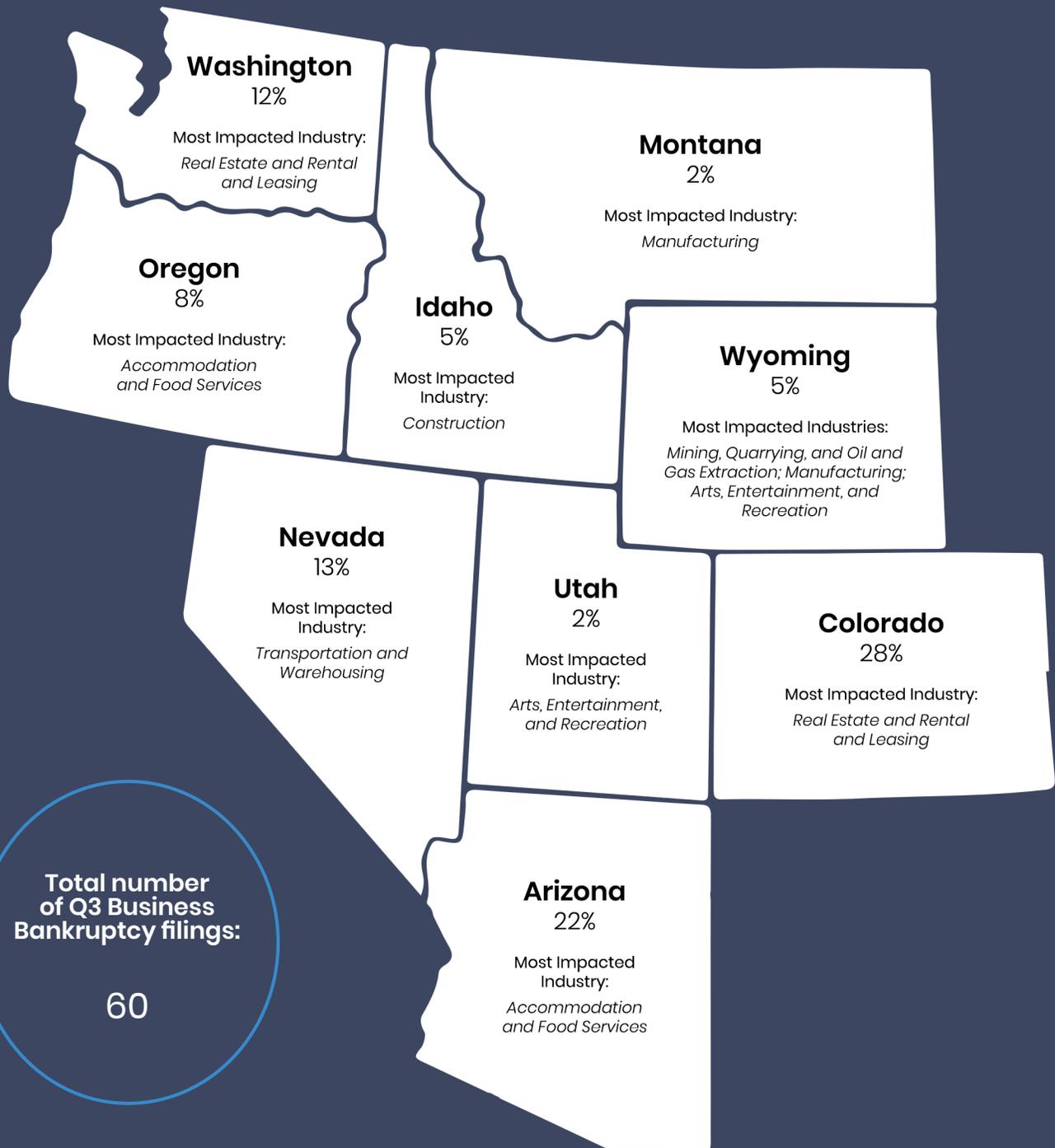
Predictably, pandemic-related lawsuits against insurance agencies have exploded within recent months, with hundreds of lawsuits arising. We've compiled some of the most recent data on these filings.

The final results of these lawsuits are hard to surmise. Court opinions have been divided. In Michigan, a judge found that an insured restaurant company "did not suffer a direct physical loss and no insurance coverage exists for the insured's claim." In Superior Court of New Jersey, the Executive Orders requiring government shutdowns was key in the legal victory for an optician company's victory against its insurance company. Appeals for many of the cases are being filed, and it may be some time before a precedent is established.

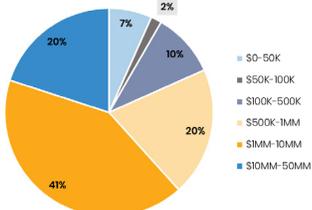
Pandemic-related Motions to Dismiss



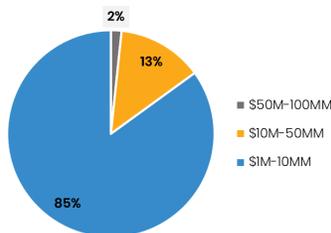
Q3 Bankruptcy Analysis Across the Rocky Mountain West



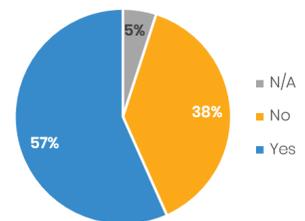
Total Assets



Total Liabilities



Total % of Subchapter V Filings



Understanding New Developments in Bankruptcy

WHAT IS SUBCHAPTER V?

A recent change to the Bankruptcy code has been critical to help struggling small businesses survive.

Subchapter V within Chapter 11 of the Bankruptcy Code became effective on February 19, just before the impact of the coronavirus was felt on most Rocky Mountain West businesses. Subchapter V has several distinct differences from traditional Chapter 11 filings, including the following:

• Continued Ownership and Management

In regular Chapter 11 filings, existing owners cannot retain equity in their company unless unsecured creditors are paid in full or new capital is injected into the company. With Subchapter V, equity holders can continue to run their enterprise, so long as unsecured creditors are compensated from disposable income for a period of 3-5 years.

• No Disclosure Statement Requirement

Unless ordered by the court, this costly and time-consuming process can be avoided entirely.

• No Competing Chapter 11 Plans

A major benefit for the debtor is their ability to create the sole Chapter 11 plan to file.

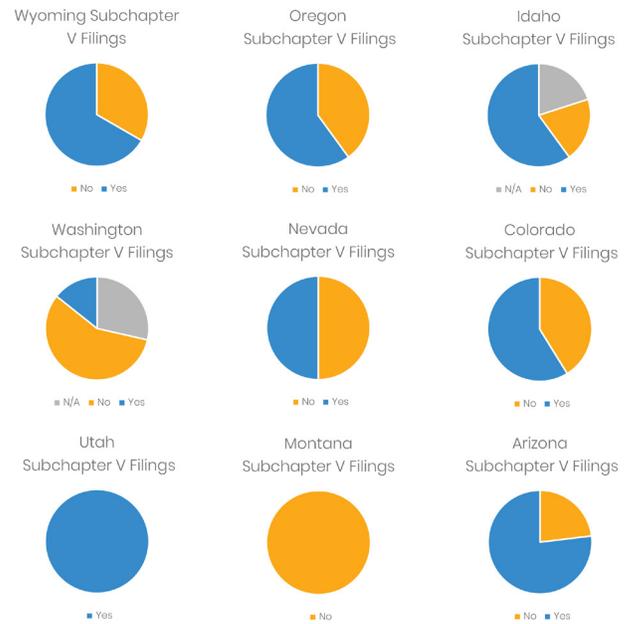
• Delayed Payment of Administrative Expense Claims and No U.S. Trustee Quarterly Fees

With the ability to spread out bankruptcy costs and the elimination quarterly fees to the United States Trustee System Fund, Subchapter V debtors are given additional flexibility to navigate bankruptcy.

• 90 Days to File a Plan

Ordinarily, the debtor has the exclusive right for four months after filing to propose their reorganization plan. With Subchapter V, this timeline is accelerated. However, this is not necessarily a burden. Most filers try to submit their proposal early to get buy-in from the creditors so they can present it to the judge with the approval of some or all of the creditors.

Breakdown of Subchapter V Filings in the Rocky Mountain West by State



HOW TO QUALIFY

There are specific rules and regulations around eligibility to file under Subchapter V. The primary criteria is that debts, secured and unsecured, must be less than \$2,725,625 with half of this number stemming directly from business activity.

The CARES Act temporarily increased this cap to \$7,500,000 in aggregate secured and unsecured non-contingent and liquidated debt. This gives more Middle Market companies the opportunity to use Subchapter V, even those with contingent and unliquidated debts that normally would never have qualified as a small business debtor.

Additionally, the enterprise filing cannot be a single-asset real estate entity. Also, the debtor must specifically choose to file under Subchapter V.

POTENTIAL IMPACT

As we examine the Middle Market business filings (\$1MM+ in liabilities) across the Rocky Mountain West, over half of all total cases are Subchapter V filings. It's significant that a subchapter less than a year old has so many filings already. We believe the cap increase from the CARES Act to be a likely factor in this subchapter's utilization. The popularity and usefulness of Subchapter V will be revealed over time.

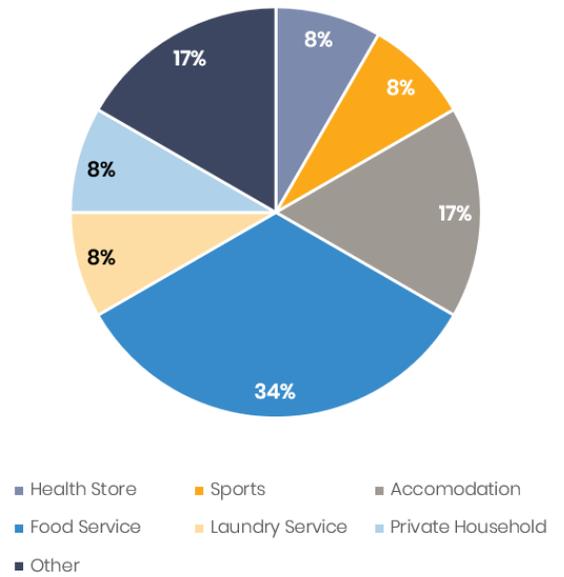


Industry Insights

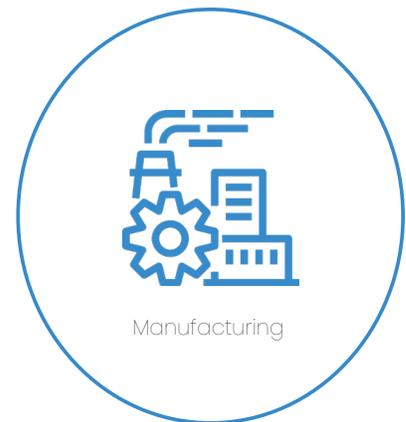
Examining the industries most impacted by Business Interruption Claims and Bankruptcy



Pandemic-related BI Claim Lawsuits in Arizona by Industry



Top 3 impacted industries in Q3 Bankruptcy filings across the Rocky Mountain West



ABOUT THE RESOLUTE INDEX

The Resolute Index was created to provide an overall interpretation of Arizona’s workout industry trends. This report analyzes the individual workout dynamics at play in the State of Arizona and its comparison with those same metrics on a national level. Our proprietary database of receivership and bankruptcy filings for entities with assets over \$1MM creates a unique vantage point rarely measured. The Resolute Index shares our assessment of the overall workout environment as it relates to the data compiled in our research.

ABOUT RESOLUTE

Since 2008, Resolute has been providing solution-oriented financial advisory services including Corporate Renewal, Receivership, Forensic Accounting and Litigation Support services. Resolute has provided services in 33 states across the country and has been involved with more than 300 distressed engagements with assets totaling over \$1 Billion. Resolute’s ability to maximize value in entangled business situations has been utilized by financial institutions, corporations, law firms, and state and federal courts.

The information and any statistical data contained herein were obtained from sources that we believe to be reliable, but we do not represent that they are accurate or complete, and they should not be relied upon as such. All estimates and opinions expressed herein constitute judgments as of the date of this report and are subject to change without notice.