

RESOLUTE INDEX

BANKRUPTCY | RECEIVERSHIP

Q3
2021

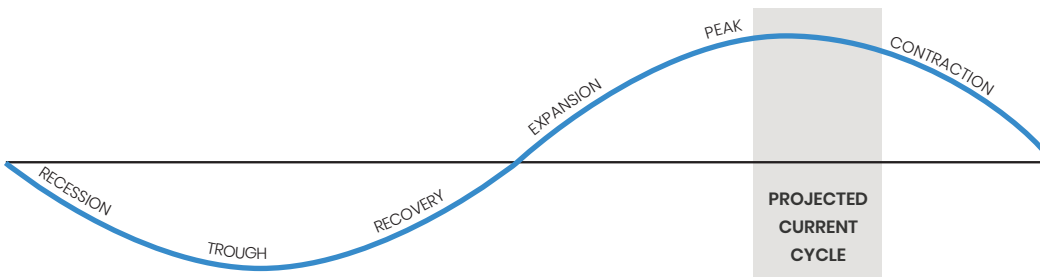
In review: Q3 was a quiet month for both middle market bankruptcy and receivership filings across the Rocky Mountain West. In bankruptcy news, a predatory industry defending itself from recourse was dealt a major blow in District of Montana U.S. Bankruptcy Court. We also take a deeper dive into Colorado business entity data to examine trends in new and existing enterprises.

WORKOUT TREND



State of the Workout Environment

Projected outlook for the turnaround industry



ARIZONA MIDDLE MARKET BANKRUPTCY

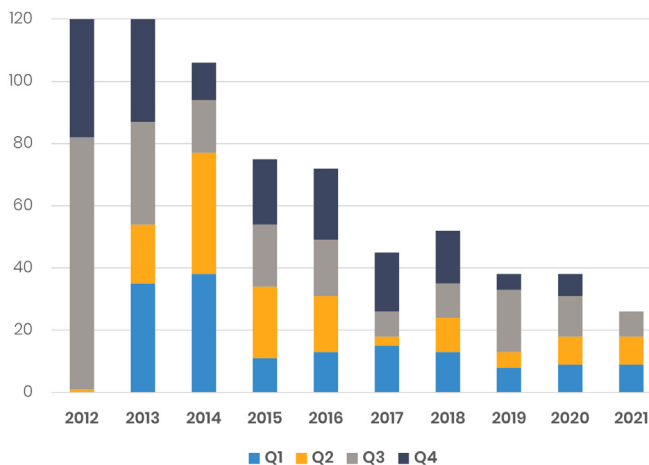


ARIZONA MIDDLE MARKET RECEIVERSHIP



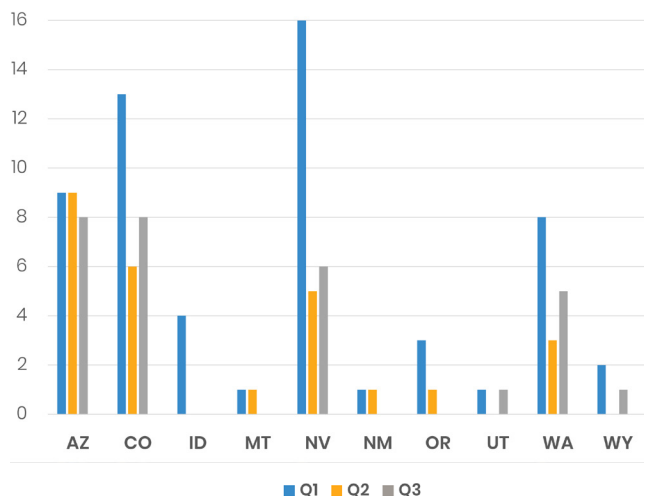
Arizona Middle Market Bankruptcies by Year

In business filings with \$1MM+ in liabilities



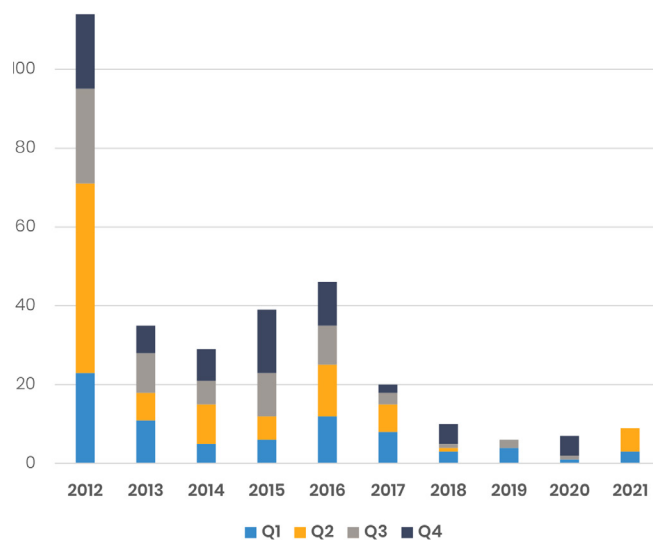
Rocky Mountain West Middle Market Bankruptcies 2021

In business filings with \$1MM+ in liabilities



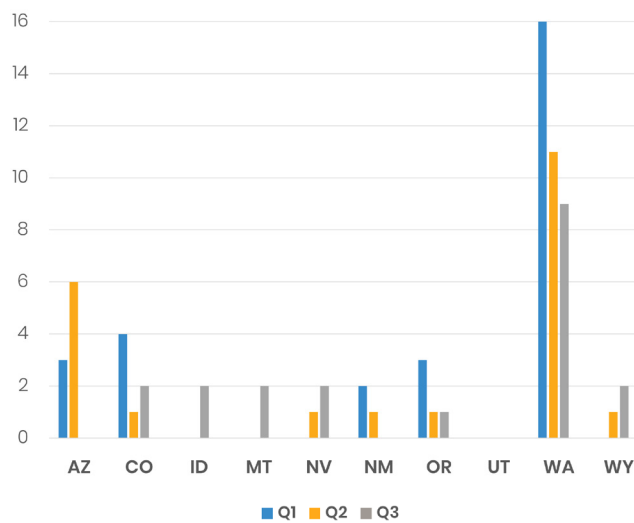
Arizona Middle Market Receiverships by Year

In business filings with \$1MM+ in liabilities



Rocky Mountain West Middle Market Receiverships 2021

In business filings with \$1MM+ in liabilities



Recent Montana Ruling Brings the Fight Against MCAs Forward

In re Shoot the Moon LLC; CapCall LLC v. Foster

ORIGIN OF THE CASE

Shoot the Moon (STM) was a restaurant business that owned and operated 16 restaurants throughout MT, ID and WA. The STM restaurants suffered severe financial pressures in light of the Great Recession and improvements demanded by some of the restaurants' franchisors. After exhausting all additional financing options they turned to several Merchant Cash Advance (MCA) companies, one of which was CapCall, LLC.

BREAKING DOWN MCAS

The MCA company provides loan recipients with immediate cash. In exchange, the MCA company receives a portion of future receivables generated through the restaurant operations, along with an additional cut anywhere from 25% to more than 100% more than the initial cash advance. As an example, CapCall would advance STM with cash of \$200,000 in exchange for CapCall's "purchase" of \$299,800 in future receivables, to be paid back within 75 business days.

THE ROLE OF CAPCALL IN STM'S DOWNFALL

For STM, the weight of their MCA loans was staggering, with some interest rates as high as 175%, in a state where the legal interest rate limit is 15%. Once the MCA companies began collecting the daily automatic withdrawals, STM bank accounts were quickly depleted, and in 2015 the business was forced to file Chapter 11 bankruptcy. Jeremiah Foster of Resolute was appointed Chapter 11 Trustee and then as Trustee of the STM Liquidating Trust under the approved Chapter 11 Plan.

In 2017 CapCall sought declaratory relief for certain post-petition funds deposited in segregated account and a judgment against the Trustee for converting post-petition receipts. The Trustee counterclaimed seeking declaratory relief as to which state's law applied to the MCA transactions and that the transactions were disguised loans rather than sales. The Trustee also sought unencumbered title to the segregated account, avoidance and recovery of preferential transfers, and state law remedies arising from CapCall charging usurious interest. Bench trial under Judge Whitman L. Holt was held in June 2021 in Great Falls Montana.

TRIAL AND THE COURT'S FINDINGS

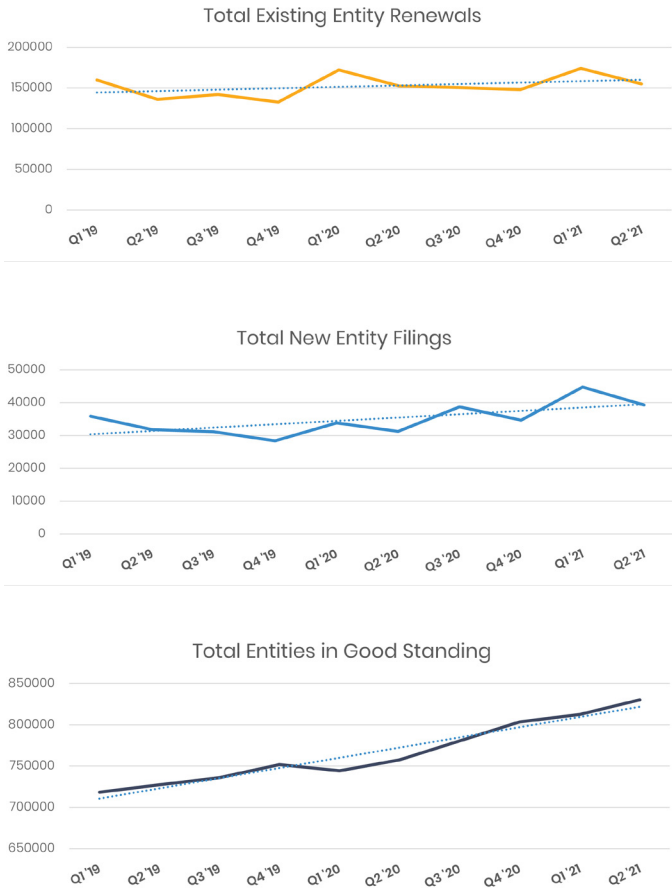
The first area of dispute was the nature of the cash advance. The Trustee argued that the transactions were disguised loans, not true sales of future receivables, like CapCall claimed.

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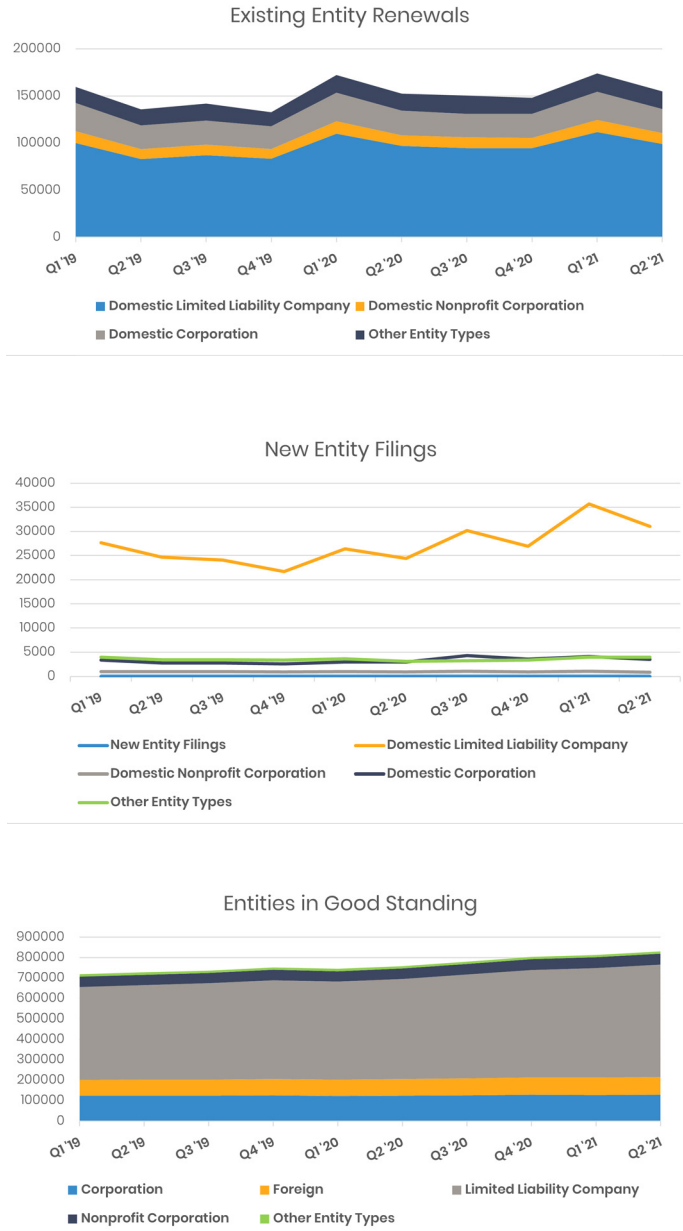
Colorado Deep Dive

When looking at the health of the middle market, it's important to keep in mind not only distressed business resolutions, but healthy starts for new enterprises. This quarter, we're taking a look at company origins and growth within the Centennial State.

Entity Summary by Quarter



Entity Changes by Quarter



UNDERSTANDING THESE TERMS

An entity is a type or structure of business. They include **Sole Proprietorships**, an unincorporated business with one owner or married couple; **General Partnerships**, an unincorporated business with two or more owners who manage the business and share the profits; **Limited Partnerships**, with general or limited partners; **Corporations**, an independent, legal entity that separates personal and business assets; and **Limited Liability Companies (LLCs)**, which can be treated as a corporation or as a pass-through entity for tax purposes.

A company considered in good standing has a state-issued document to ensure compliance with state filings and other requirements with the Secretary of State's office. Some lenders require good standing to process and approve financing.

Foreign in this context is not a national designation, but rather a statewide designation. An entity is considered "domestic" in its state of formation and "foreign" in other states. Good standing status can be crucial to conducting foreign business in a new state.

Continued from page 2

Judge Holt found that the transactions were indeed disguised loans, not true sales of receivables.

LOCATION IS EVERYTHING

The next area of dispute was proper venue for the case, and which state law should be considered in the case. The Trustee argued that the case belonged in Montana, while CapCall sought the use of New York State law, a jurisdiction that has been historically friendly to MCA companies. Judge Holt concluded that Montana law was to be applied.

RESULT

Since Judge Holt determined that the transactions were indeed loans and Montana law applied to the matter, the transactions violated Montana Code Annotated 31-1-107(1). The effective interest rates for the transactions were calculated between 82% and 175% - all greatly in excess of the maximum of 15%.

Judge Holt awarded the Trustee \$1.2MM on its usury claim.

RESOLVING THE PREFERENCE CLAIM

Due to the Court's decision that the CapCall MCA structure was a disguised loan and also on the conclusion CapCall received more than it would have in a Chapter 7 bankruptcy, Judge Holt determined that the Trustee was entitled to avoid and recover challenged transfers made to CapCall for \$1.1MM

Judge Holt further held that CapCall lacked an ownership or enforceable security interest in the receivables held in the segregated account since the onset of bankruptcy. Therefore, the Trustee was entitled to the funds in the account, amounting to \$228,000. The Court also found that because CapCall is obligated to the bankruptcy estate on the preference claim, it is not entitled to payment on its proof of claim until it has satisfied its judgement in full.

SHORT TERM AND LONG TERM CONSEQUENCES

This ruling gives the Trustee over \$2.5MM in funds directly back to the Liquidating Trust. The greed of the MCA companies who preyed on STM put many Montanans in a difficult place. At its height, STM employed over 700 people. The closure of the business hurt these individuals, along with local investors and businesses. The recovery of these funds allows the Trustee to provide additional returns to these creditors. This is especially key to raising returns for general unsecured claimants, a creditor class that often receives marginal or no returns.

Even more importantly, this ruling provides powerful legal precedents against the MCA industry. These companies wreak havoc on business owners - *Bloomberg* describes them as the "debt-collection machine that's chewing up small businesses across America." Thanks to the efforts of the Trustee, the fight for justice continues.

For more information about *In re Shoot the Moon LLC; CapCall LLC v. Foster*, visit ResoluteCommerical.com

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 regional level. In addition, the Resolute Index measures noteworthy trends in bankruptcy filings and the overall business climate in the Rocky Mountain West region of the United States, which includes Washington, Oregon, Idaho, Montana, Wyoming, Nevada, Utah, Colorado and Arizona.

Our proprietary database of receivership and bankruptcy filings for entities with assets over \$1MM creates unique insights. 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. Resolute has provided services in 36 states across the country and has been involved with more than 350 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, state courts, 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.