ADVANCE SHEET HEADNOTE
September 21, 2026

2026 CO 64

No. 25SA265, *A.R. Wilfley & Sons, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*—Insurance—Contract Interpretation—Scope of Coverage—Umbrella/Excess Carriers—*Deisch & Marion, P.C. v. Int'l Ins. Co.*, 771 P.2d 19 (Colo. App. 1989).

The parties' dispute in this insurance case centers on the umbrella/excess carrier's obligation to defend against any occurrence "not covered" by the insured's primary policies. The carrier and the insured offer competing interpretations of "not covered," each yielding a different outcome. One reading construes "not covered" to mean the primary policies do not insure against the occurrence at all. The other reads "not covered" more broadly to include situations where the primary policies do insure against the occurrence but cannot pay because the primary carrier is insolvent.

Under the first reading, the umbrella/excess policies remain dormant because the occurrence is covered by the primary policies and their limits have not been reached due to the primary carrier's insolvency. Under the second, the umbrella/excess policies are triggered because payment cannot be collected from

the primary carrier even though the occurrence is otherwise covered. The choice between these interpretations is dispositive.

The certified question from the federal district court asks whether the primary carrier's insolvency places a covered occurrence in the "not covered" category, thereby requiring the umbrella/excess carrier to drop down and provide first-dollar indemnity and defense costs. Put differently, does "not covered" include a covered occurrence when the primary carrier cannot pay? Based on the unambiguous language in the umbrella/excess policies, the supreme court answers "no." "Not covered," as used in those policies, addresses the scope of coverage, not the collectibility of payment.

The policies distinguish coverage from collectability, making collectibility relevant only when the primary policies are not scheduled—and here, the primary policies are scheduled. Because the umbrella/excess policies do not insure against the financial misfortune of a scheduled primary carrier selected by the insured, they do not drop down due to the primary carrier's insolvency. A covered occurrence remains covered even when the primary carrier is insolvent.

The division's decision in *Deisch & Marion, P.C. v. Int'l Ins. Co.*, 771 P.2d 19 (Colo. App. 1989), does not alter this conclusion. That case is distinguishable and its most relevant passage is dictum. In any event, to the extent *Deisch* is incompatible with today's decision, it is overruled.

The Supreme Court of the State of Colorado
2 East 14th Avenue • Denver, Colorado 80203

2026 CO 64

Supreme Court Case No. 25SA265
Certification of Question of Law
United States District Court for the District of Colorado Case No. 1:23-cv-02198-NRN

Plaintiff:

A.R. Wilfley & Sons, Inc.,

v.

Defendants:

National Union Fire Insurance Company of Pittsburgh, PA; Federal Insurance Company; and United States Fire Insurance Company.

Certified Question Answered
en banc
September 21, 2026

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JUSTICE SAMOUR delivered the Opinion of the Court, in which **CHIEF JUSTICE MÁRQUEZ**, **JUSTICE BOATRIGHT**, **JUSTICE HOOD**, **JUSTICE GABRIEL**, **JUSTICE BERKENKOTTER**, and **JUSTICE BLANCO** joined.

JUSTICE SAMOUR delivered the Opinion of the Court.

¶1 Jorge Luis Borges imagined a "garden of forking paths," where the meaning of a text branches and carries the reader to different endings depending on which interpretive offshoot is taken. *See* Jorge Luis Borges, *The Garden of Forking Paths*, *in* Collected Fictions 119, 123 (Andrew Hurley trans., Penguin Books 1999) (1941). In the context of insurance policies, litigants frequently chart divergent interpretive paths. So it is here, in this certified-question case. But as we demonstrate, the policy language at issue does not branch: it is subject to only one meaning. And that meaning, in turn, dictates the answer to the certified question.

¶2 The policies at the heart of the parties' dispute require the umbrella/excess carrier to defend against any occurrence "not covered" by the insured's primary policies.[1] The umbrella/excess carrier and the insured offer competing interpretations of "not covered," each yielding a different outcome.

¶3 One interpretive path reads "not covered" to mean that the primary policies do not insure against the occurrence in question. The other reads "not covered" more broadly to include situations where the primary policies do insure against

[1] Umbrella coverage and excess coverage are markedly different concepts in the insurance context. The former extends the protection afforded by an underlying primary policy, whereas the latter applies only after the limits of an underlying policy have been exhausted. Below, we describe the differences between these two forms of coverage in more detail.

the relevant occurrence but cannot pay because the primary carrier is insolvent. Under the first path, the umbrella/excess policies remain dormant because the occurrence *is* covered by the primary policies and their underlying limits have yet to be reached due to the primary carrier's insolvency. Under the second, the umbrella/excess policies are triggered because payment cannot be collected from the primary carrier—even though the occurrence is otherwise covered by that carrier's policies. And the choice between these two paths is dispositive.

¶4 These dueling interpretations of "not covered" frame the certified question from the federal district court: whether the primary insurer's insolvency places a covered occurrence in the "not covered" category, thereby requiring the umbrella/excess carrier to drop down and provide first-dollar indemnity and defense costs to the insured. Put differently, does "not covered" include a covered occurrence when the primary carrier cannot pay? Based on the unambiguous language in the umbrella/excess policies, we answer "no." We agree with the umbrella/excess insurer and conclude that "not covered," as used in its policies, addresses the scope of coverage, not the collectibility of payment for a covered occurrence.

¶5 The umbrella/excess policies distinguish coverage from collectibility, making collectibility relevant only when the primary policies are not

scheduled—and here, the underlying policies are scheduled.[2] Because the umbrella/excess policies do not provide protection against the financial misfortune of a scheduled primary insurer selected by the insured, they cannot assume the role the insured urges them to take. The upshot is this: the primary carrier's insolvency does not transform a covered occurrence for which payment cannot be collected into an occurrence that is "not covered" and that triggers the umbrella/excess policies. A covered occurrence remains covered when the primary carrier is insolvent. The umbrella/excess policies here are therefore not triggered.

I. Facts and Procedural History

A. The Coverage Tower

¶6 For more than a century, A.R. Wilfley & Sons, Inc. ("Wilfley") has manufactured pumps for use in mining and industrial operations. Since the 1980s, Wilfley has been embroiled in a steady stream of lawsuits brought by individuals alleging bodily injury from exposure to asbestos in its products ("Underlying Actions"). These actions continue to wind their way through courts across the country, with no imminent conclusion on the horizon.

[2] A scheduled policy in this context refers to an underlying primary policy listed in an excess or umbrella policy's schedule that must remain in effect for the excess or umbrella policy to operate as intended.

¶7 In more recent years, coverage for the Underlying Actions was largely supplied by Great Northern Insurance Company ("Great Northern"), one of Wilfley's primary insurers. But Great Northern's general liability policies eventually ran dry—their limits exhausted through settlements and the payment of claims.

¶8 Like Great Northern, Reliance Insurance Company ("Reliance") issued primary general-liability policies to Wilfley. But Reliance's policies became uncollectible due to its insolvency.

¶9 That is where Federal Insurance Company ("Federal") enters the picture. Federal issued at least three umbrella/excess policies to Wilfley, covering the following policy periods: (1) January 1, 1981, to January 1, 1982; (2) January 1, 1982, to January 1, 1983; and (3) January 1, 1985, to January 1, 1986 (the "Federal Policies"). The insuring agreement in each of the Federal Policies states:

> In consideration of the payment of the required premium, the Company hereby agrees, subject to all of the terms of this policy, to pay on behalf of the insured all sums, as more fully defined by the term ultimate net loss, for which the insured shall become obligated to pay by reason of liability
>
> (a) imposed upon the insured by law or
>
> (b) assumed under contract or agreement by the insured,
>
> arising out of personal injury, property damage or advertising liability caused by an occurrence.

¶10 In this multilayered coverage tower, the Federal Policies form the capstone, sitting above various underlying primary policies—including, as relevant here, scheduled primary policies issued by Reliance. The difficulty is that Reliance is no longer a functioning insurer due to its insolvency. Thus, like Great Northern, it is no longer able to shoulder its share of Wilfley's asbestos-related liability.

¶11 But Great Northern and Reliance are not the only missing supports beneath Federal's coverage: Every source of Wilfley's underlying primary insurance has fallen away, whether through insolvency, exhaustion, exclusion, or settlement. Reliance was Wilfley's last-standing underlying primary insurer. Wilfley now contends that the Federal Policies require Federal to step in to defend and indemnify it. Federal disagrees. Because this dispute is what steered the certified question to our front steps, we turn next to the terms of the Federal Policies.

B. The Coverage Tower's Upper Layer: The Federal Policies

¶12 The Federal Policies provide coverage for occurrences that are not covered by scheduled underlying policies, such as Reliance's primary policies, as well as for claims that exceed the underlying limits of the scheduled underlying policies. But what do the Federal Policies actually say? We examine their most relevant provisions.

¶13 The "Underlying Limit—Retained Limit" provision in the Federal Policies states:

> The Company shall be liable only for the ultimate net loss the excess of the greater of the insured's underlying limit or retained limit defined as:
>
> (a) Underlying limit—an amount equal to the limits of liability indicated beside the underlying insurance listed in the schedule of underlying insurance, plus the applicable limits of any other underlying insurance collectible by the insured;
>
> (b) Retained limit—The amount specified . . . as the result of all occurrences not covered by said underlying insurance . . . .

¶14 The Federal Policies' defense obligations are similarly limited. They arise only when an occurrence is "not covered" by any underlying insurance but is covered under the terms of the Federal Policies:

> (b) With respect to any occurrence not covered by the underlying policies listed in the schedule of underlying insurance, or any other underlying insurance collectible by the insured, but covered by the terms and conditions of this policy the Company shall, in addition to the amount of ultimate net loss payable;
>
> (1) defend any suit against the insured . . . ;
>
> (2) pay all expenses incurred by the Company, all costs taxed against the insured in any such suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment . . . .

¶15 The "Maintenance of Underlying Insurance" condition in the Federal Policies underscores this structure. It requires Wilfley to maintain the underlying primary insurance in full force and states that Federal's obligations do not come

into play until the applicable underlying limits have been paid—whether by Wilfley or by one of its underlying insurers:

> The policy or policies referred to in the attached schedule . . . shall be maintained in full effect during the currency of this policy . . . . Failure of the insured to comply with the foregoing shall not invalidate this policy but in the event of such failure, the Company shall only be liable to the same extent as if the insured had complied with this condition.

¶16 Having set out the policy terms that establish Federal's coverage obligations, we turn to the litigation that gave rise to the certified question.

C. The Dispute's Passage Through the Federal District Court and the Certified Question It Delivered

¶17 After exhausting the limits of the Great Northern primary policies—and confirming that no refuge lay in any of the other scheduled underlying policies, including Reliance's insolvent policies—Wilfley tendered the Underlying Actions to Federal. Federal agreed to defend, but only while holding tight to a full reservation of rights. That reservation functioned as a legal placeholder, preserving Federal's ability to later deny coverage and seek repayment of defense costs.

¶18 When Federal ultimately closed the door on coverage, Wilfley filed suit in the United States District Court for the District of Colorado, alleging breach of contract, seeking declaratory relief, invoking estoppel, and pursuing a claim of common law insurance bad faith. As relevant here, Wilfley sought both defense

and indemnity for claims that would have fallen within the four corners of Reliance's scheduled primary policies had that carrier remained solvent.

¶19 Wilfley's theory was, on its face, simple and direct. Because the benefits available under Reliance's scheduled underlying policies had become uncollectible following that carrier's insolvency, Wilfley maintained that its claims were "not covered" by those policies—as "not covered" is used in the Federal Policies. Noting that Reliance was out of the picture, Wilfley urged that Federal was required to "drop down" and supply the primary coverage Reliance could no longer furnish. In Wilfley's view, insolvency created a kind of coverage eclipse: once Reliance disappeared into financial darkness, Federal was obliged to shine in its stead.

¶20 Federal responded with equal clarity. After counterclaiming for declaratory relief and monetary damages, it moved for judgment on the pleadings, contending that the Federal Policies did not allow a primary insurer's insolvency to redraw the coverage map and pull an umbrella/excess insurer from the pinnacle of the coverage tower down to the first line of defense.

¶21 The Federal Policies, argued Federal, did not convert an excess insurer into a stand-in for an insolvent primary carrier simply because the primary carrier could no longer bear the load its policies assigned to it. Instead, Federal maintained, the phrase "not covered" spoke to whether the occurrence fell within

the scope of the underlying policies—not whether the primary insurer was financially capable of satisfying its obligations. In Federal's framing, collectibility was a practical concern, not a coverage trigger.

¶22 Recognizing that our court had not previously addressed whether the insolvency of a scheduled underlying insurer can trigger an umbrella/excess policy, the district court canvassed authorities nationwide, including published opinions from our court of appeals. *A.R. Wilfley & Sons, Inc. v. Fed. Ins. Co.*, No. 23-cv-02198-NRN, 2025 WL 1158355, *8–11 (D. Colo. Apr. 21, 2025) ("*Wilfley I*"). Those sources collectively pointed the court in an unmistakable direction: the insolvency of a scheduled primary insurer does not alter an umbrella/excess insurer's obligations. *Id.* The court therefore concluded that Federal had neither defense nor indemnity responsibilities "until the underlying limits have been exhausted"—or, as expressly contemplated by the Federal Policies, until those limits have been "paid by Wilfley." *Id.* at *9.

¶23 In rejecting Wilfley's attempt to equate coverage with collectibility, the court focused on the Federal Policies' use of the two concepts in separate contexts. *Id.* at *10. It observed that the policies distinguished between whether an occurrence fell within the scope of the underlying policies and whether the insurer underwriting those policies was financially able to perform. *Id.* The court reasoned that an occurrence did not become "uncovered" merely because such an

insurer could not, or would not, pay. *Id.* Accordingly, the court held that Federal had no obligation to provide either a defense or first-dollar coverage to Wilfley. *Id.* at *14.

¶24 Wilfley sought reconsideration or, alternatively, certification of the dispositive question to this court. The district court withdrew its earlier order (*Wilfley I*) and granted the request for certification. *See A.R. Wilfley & Sons, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, No. 23-cv-02198-NRN, 2025 WL 4109052, *7 (D. Colo. Sep. 3, 2025) ("*Wilfley II*"). It flagged two reasons for doing so. First, it pointed to a court of appeals decision dating back to the late 1980s—*Deisch & Marion, P.C. v. International Insurance Co.*, 771 P.2d 19, 20 (Colo. App. 1989)—that arguably cut against the grain, appearing to require an umbrella/excess insurer to defend when the benefits under the primary insurance became uncollectible. *Wilfley II*, at *7. Second, it noted that the issue was poised to land before the Tenth Circuit and that guidance from this court on an unsettled point of Colorado law would be valuable. *Id.*

¶25 We accepted the certified question, which reads as follows:

> Where the "Insuring Agreement" and "Defense Provisions" language of an excess umbrella insurance policy includes the following:
>
> > With respect to any occurrence not covered by the underlying policies listed in the schedule of underlying insurance, or any other underlying insurance collectible by the insured, but covered by the terms and conditions of this policy the Company shall, in addition to the amount of ultimate net loss payable; . . . defend any

> suit against the insured seeking damages on account of personal injury . . . .
>
> and the underlying insurer or insurers have become insolvent, is the excess umbrella carrier obligated to "step into the shoes" of the insolvent carrier by providing first-dollar indemnity and defense costs to the insured that otherwise would have been paid by the insolvent carrier?

¶26 With the contours of the dispute now fully drawn—and the certified question squarely before us—we turn to the analysis.

II. Analysis

¶27 Before surveying the coverage tower, we pause to address several issues that form the foundation of our analysis: the source of our jurisdiction, the standard of review, and the principles governing contract interpretation. With this bedrock laid down, we briefly digress to explain the differences between umbrella coverage and excess coverage. Our focus then shifts to Federal's coverage, and we proceed to give effect to the unambiguous policy language, informed where appropriate by decisions from other jurisdictions. We ultimately conclude that an umbrella/excess insurer does not become the primary insurer's stopgap—or inherit its obligations—simply because the primary insurer becomes insolvent. Therefore, an occurrence covered by Reliance's scheduled underlying policies remains covered even though Reliance has become insolvent. And because, as pertinent here, the Federal Policies can be triggered only by occurrences that are

"not covered" by Reliance's policies or when the underlying limits have been exhausted, we answer the certified question in the negative.

A. The Analytical Groundwork: Jurisdiction, Standard of Review, and Contract-Interpretation Principles

¶28 First, our jurisdiction. C.A.R. 21.1(a) allows us to answer questions of Colorado law certified by a federal court that "may be determinative of the cause then pending in the certifying court" and for which there is "no controlling precedent" from our court. *Hamilton v. Amazon.com Servs. LLC*, 2024 CO 60, ¶ 21, 555 P.3d 620, 625–26 (citing *In re Phillips*, 139 P.3d 639, 643 (Colo. 2006)). Whether to accept a certified question lies within our sound discretion. *Id.*, 555 P.3d at 626. We accepted jurisdiction here because the certified question presents an issue on which we have not yet spoken, and our answer will determine whether Wilfley may tap the excess-coverage portion of the Federal Policies.

¶29 Second, our standard of review. The certified question before us involves the interpretation of insurance policies, which we review de novo. *Bailey v. Lincoln Gen. Ins. Co.*, 255 P.3d 1039, 1050 (Colo. 2011). When a certified question presents a novel issue, decisions from other jurisdictions may furnish persuasive guidance. *People v. Weiss*, 133 P.3d 1180, 1187 (Colo. 2006); *see also Furlong v. Gardner*, 956 P.2d 545, 551–52 (Colo. 1998) (collecting federal cases to resolve a matter of first impression).

¶30 Third, the principles of contract interpretation. Because insurance policies are construed according to standard principles of contract interpretation, our primary objective is to effectuate the parties' intent as expressed in the policy language. *Cotter Corp. v. Am. Empire Surplus Lines Ins. Co.*, 90 P.3d 814, 819 (Colo. 2004). We give policy terms their plain and ordinary meaning unless those terms demonstrate a contrary intent. *Cyprus Amax Mins. Co. v. Lexington Ins. Co.*, 74 P.3d 294, 299 (Colo. 2003). Further, we do not rewrite the parties' agreement by adding or deleting provisions to expand or restrict coverage. *Id.* And although ambiguous terms in an insurance contract are generally construed in favor of the insured, we enforce unambiguous terms as written, giving them their "plain and generally accepted meaning." *Heller v. Fire Ins. Exch., a Div. of Farmers Ins. Grp.*, 800 P.2d 1006, 1009 (Colo. 1990).

¶31 With this root system in place, we analyze the coverage tower. Our first step is to take a bird's-eye view of the tower's architecture to orient ourselves to the insurance arrangement before us.

B. A Guided Tour of the Coverage Tower

¶32 The insurance framework in this case is tiered: Wilfley did not purchase a single, monolithic policy; it built a coverage tower composed of primary, umbrella, and excess liability layers. Each layer has a distinct function, attaches at a different point, and reflects a different allocation of risk between insurer and insured.

Understanding those layers is essential because the certified question turns on the role Federal agreed to play within this stratified tower.

¶33 Reliance's primary policies are situated at the base of the coverage tower. As Wilfley's last primary carrier, Reliance contracted to supply the first layer of defense and indemnity through primary liability policies that respond to claims arising from covered occurrences.

¶34 Federal occupies an entirely different position in the coverage tower—it resides at the tower's apex. It issued Wilfley a policy containing both umbrella and excess liability coverage. We take a short detour here to unpack the differences between these two types of coverage.

C. The Two Distinct Forms of Coverage Under the Federal Policies—Umbrella and Excess

¶35 Generally, excess coverage and umbrella coverage are both triggered only when "liability exceeds the available primary coverage." *Apodaca v. Allstate Ins. Co.*, 255 P.3d 1099, 1103 (Colo. 2011) (quoting 15 Lee R. Russ & Thomas F. Segalla, *Couch on Insurance* § 220:32 (3d ed. 2010)). But that's where the similarities end. Although the two forms of coverage are often offered under the same policy, they perform distinct functions.

¶36 Umbrella coverage runs horizontally: It *extends* the scope of coverage afforded by a primary policy. *Id.* In effect, it provides primary coverage in situations where the primary insurance provides no coverage at all. *See Com.*

Union Ins. Co. v. Walbrook Ins. Co., 7 F.3d 1047, 1053 (1st Cir. 1993). True to its namesake, an umbrella policy broadens the scope of protection under which an insured may seek shelter by offering "first dollar liability coverage" where the underlying primary insurance affords none. *Apodaca*, 255 P.3d at 1103 (quoting 1 *New Appleman on Insurance Law Library Edition* § 1.06[7] (Jeffrey E. Thomas & Francis J. Mootz, III eds., 2010)). Here, for purposes of the certified question, we assume that the occurrence in question falls within the scope of Reliance's primary policies, leaving no gap for the umbrella coverage to bridge.[3]

¶37 Excess liability coverage, by contrast, extends the coverage vertically, adding successive levels of protection that attach *only after* the limits of the underlying primary coverage have been exhausted. *Id.* (citing 1 *New Appleman on*

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[3] Wilfley asserts that the terms and conditions of Reliance's primary policies are not included in the record before us and that, as a result, we should not assume the Underlying Actions fall within the scope of those policies. But that contention raises a matter beyond the purview of the certified question. Besides, if the Underlying Actions were deemed to fall outside the scope of Reliance's primary policies, Reliance's insolvency would be irrelevant. In that event, the Federal Policies' umbrella coverage presumably would have been triggered irrespective of Reliance's insolvency. Thus, for present purposes, we must assume that the Underlying Actions fall within the coverage afforded by Reliance's primary policies, as the issue we've been asked to address is not whether the Underlying Actions fall within the scope of Reliance's primary policies in the first instance, but whether those covered actions are rendered "not covered" by Reliance's insolvency. Similarly, we assume that Federal's excess obligations have not been triggered by the exhaustion of Reliance's policy limits. Otherwise, the question of Reliance's insolvency would presumably be neither here nor there.

Insurance Law Library Edition § 1.06[7]). Unlike primary or umbrella coverage, excess coverage constitutes no part of the foundational layer of coverage—it rests atop that foundation. Accordingly, an excess insurer assumes a narrower and less frequently triggered risk, a distinction reflected in the lower premiums typically charged for excess coverage. *Id.* Put simply, an excess carrier bargains to insure against occurrences that are covered by an underlying primary policy and result in losses that exceed the limits of that policy. *Id.*; 1 Jordan R. Plitt et al., *Couch on Insurance* § 1:4, Westlaw (3d ed. database updated June 2026) (defining an "[e]xcess insurer" as "an insurer whose coverage of a given loss is activated only after the magnitude of the loss exceeds the limits of applicable 'primary' insurance").

¶38 With the structure of the coverage tower in view, and with the distinctions between umbrella and excess coverage now clarified, we return to the circumstances that hoisted the certified question before us. Reliance, a scheduled primary insurer, is insolvent and unable to fulfill its obligations with respect to the Underlying Actions, which are covered by its policies. That insolvency, in turn, has left a crack at the base of the coverage tower. But must Federal's umbrella/excess coverage now drop down and take on the weight Reliance can no longer bear? To answer, we fix our gaze on the tower's uppermost tier, where the Federal Policies sit.

D. The Unambiguous Terms of the Federal Policies Do Not Require Federal to Step into the Shoes of an Insolvent, Scheduled Underlying Insurer

¶39 Our Polaris is the language of the Federal Policies. And that language is clear as a Colorado cloudless noon, allowing for only one reasonable reading:

> With respect to any occurrence *not covered* by the underlying policies listed in the schedule of underlying insurance . . . , but covered by the terms and conditions of this policy[,] the Company shall, in addition to the amount of the ultimate net loss payable . . . defend any suit against the insured seeking damages on account of personal injury, property damage or advertising liability . . . .

(Emphasis added.)

¶40 Thus, Federal, in its role as an umbrella/excess carrier, did not agree to defend Wilfley against claims for which a scheduled underlying insurer provided coverage. Nor did Federal agree to indemnify Wilfley before the underlying coverage had been exhausted.

¶41 Wilfley, however, interprets "covered" to encompass collectibility—meaning that when a claim is "not collectible," it is also "not covered." Building on this reading, Wilfley maintains that because Reliance can no longer pay claims for any occurrences within the scope of its policies, those claims are "not covered" under its policies.

¶42 But that interpretation veers away from the intent the parties expressed in the Federal Policies. Those policies draw a purposeful distinction between the *existence* of coverage through a *scheduled* underlying insurer such as Reliance and

the *collectibility* of coverage from an *unscheduled* insurer. Collectibility bears on coverage only in one narrow context—when the underlying insurance is issued by an unscheduled insurer—and that context is not in play here.

¶43 Three provisions confirm that "collectible" modifies Federal's obligations solely with respect to *unscheduled* underlying insurance and has no role in delineating Federal's obligations regarding scheduled underlying insurance. First, the "Defense Provisions" paragraph plainly distinguishes between claims *covered* by scheduled underlying insurance and insurance *collectible* from unscheduled insurers. Federal's duty to defend Wilfley is limited to occurrences giving rise to claims "*not covered* by the underlying policies *listed in the schedule* of underlying insurance, or *any other underlying insurance collectible* by the insured, but covered by the terms and conditions of this policy." (Emphases added.)

¶44 Second, the "Underlying Limit" provision differentiates between scheduled and unscheduled coverage and connects collectibility exclusively to the latter. This provision defines the insured's underlying limit as "an amount equal to the limits of liability indicated beside *the underlying insurance listed in the schedule of underlying insurance*, plus the applicable limits of *any other underlying insurance collectible* by the insured." (Emphases added.)

¶45 Third, the "Other Insurance" condition ties collectibility only to insurance available from unscheduled underlying carriers. Beyond the coverage afforded

by the scheduled insurance policies, Federal's indemnification obligations are in excess of all "other valid and *collectible* insurance with *any other insurer* . . . available to the insured covering a loss also covered by [the Federal Policies]." (Emphases added.)

¶46 The consistency of these three provisions reveals deliberate drafting choices. The Federal Policies repeatedly use "covered" to describe occurrences falling within the scope of the scheduled underlying insurance and "collectible" to describe insurance available from unscheduled insurers. Each term carries its own weight. If, as Wilfley urges, "covered" and "collectible" shared a single heartbeat, the repeated references to collectibility would be reduced to surplusage. More troubling, such a reading would erase the distinctions the parties carefully wove between scheduled and unscheduled insurers, effectively reading the term "collectible" out of the Federal Policies altogether.

¶47 Notably, the "Maintenance of Underlying Insurance" condition underscores the parties' intent for Wilfley to maintain the scheduled underlying insurance "in full effect during the currency of [the Federal Policies]." That portion of the Federal Policies warns that if Wilfley fails to do so, Federal "shall only be liable to the same extent as if the insured had complied with this condition."

¶48 Thus, the Federal Policies reflect a calculated allocation of risk from the outset: Wilfley agreed to maintain scheduled underlying insurance, and Federal

agreed to sit above the scheduled underlying insurers to cover umbrella/excess claims. Wilfley's interpretation would disrupt that allocation of risk. Under its theory, any coverage provided by a scheduled underlying policy would become meaningless the moment that coverage became uncollectible, effectively dragging Federal from its position atop the coverage tower down to the dirt. This, in turn, would at once convert Federal into a financial guarantor of every scheduled underlying insurer—a risk Federal neither agreed to assume nor charged a premium to cover—and relieve Wilfley of its responsibility to maintain underlying coverage through a solvent carrier of its own choosing.

¶49 Because an "insurance policy is merely a contract that courts . . . interpret in line with well-settled principles of contract interpretation," it is our task to ascertain and give effect to the parties' intent by reading the policy as a whole and harmonizing its provisions so none will be rendered meaningless. *Cyprus Amax Mins. Co.*, 74 P.3d at 299, 307; *see also Pub. Serv. Co. of Colo. v. Wallis & Cos.*, 986 P.2d 924, 933 (Colo. 1999) (applying principles of contract interpretation to give effect to the parties' chosen language and to avoid rendering a term superfluous); *Rocky Mountain Prestress, LLC v. Liberty Mut. Fire Ins. Co.*, 960 F.3d 1255, 1262 (10th Cir. 2020) (applying Colorado law to give effect to the term "defective workmanship" in an insurance policy while avoiding an interpretation that would strip the phrase of its meaning). Here, the parties intended for the Federal Policies to trigger first-

dollar obligations only when an occurrence is not covered by a scheduled underlying policy—i.e., only when an occurrence falls outside the scope of coverage afforded by a scheduled underlying policy. And nothing in the Federal Policies indicates that the parties intended insolvency to transform a covered occurrence into an uncovered one.

¶50 We observe that we are beating a drum many others have beat before. Federal and state courts alike have recognized that the phrase "not covered" addresses occurrences falling outside an underlying policy's scope of coverage—not an underlying insurer's inability to pay a claim grounded in a covered occurrence. *See, e.g.*, *Mission Nat'l Ins. Co. v. Duke Transp. Co.*, 792 F.2d 550, 553 (5th Cir. 1986) ("[W]hen an excess insurer uses the term 'covered' or 'not covered,' it is agreeing to drop down only in the event that the terms of the underlying policy do not provide coverage for the occurrence or occurrences in question."); *Garmany v. Mission Ins. Co.*, 785 F.2d 941, 947 (11th Cir. 1986) ("'Not covered by said underlying insurances,' as that phrase is understood in normal usage, speaks only to the *fact* of coverage under the underlying policy, not to the *extent* of coverage under that policy."); *Wells Fargo Bank, N.A. v. Cal. Ins. Guarantee Ass'n*, 45 Cal. Ct. Rptr. 2d 537, 544–45 (Cal. App. 1995) (rejecting the insured's interpretation that "covered" meant the insurer must pay for the loss and explaining that a "layperson would understand that a claim is 'covered by

underlying insurance' if it falls within the *scope* of coverage of that insurance" (emphasis added)).

¶51 Closer to home, in *Scott's Liquid Gold, Inc. v. Lexington Insurance Co.*, 293 F.3d 1180 (10th Cir. 2002), the Tenth Circuit gave the cold shoulder to the very interpretation Wilfley champions. The umbrella policy there referred to occurrences "not covered under the underlying insurance . . . or under any other underlying insurance collectible by the Insured." *Id.* at 1186 (omission in original). The insured argued that once the underlying policies were exhausted, an occurrence that fell within their scope could no longer be deemed covered. *Id.*

¶52 Predicting how Colorado would resolve the question, the Tenth Circuit declined that overbroad interpretation as unsupported by the text of the umbrella policy. Instead, it explained that the purpose of the "not covered" clause was to "'provide for risks *not insured*'" by the underlying policies. *Id.* (emphasis added) (quoting *Unigard Mut. Ins. Co. v. Mission Ins. Co.*, 907 P.2d 94, 99 (Colo. App. 1994)). Thus, the court concluded that "not covered" plainly referred to "an event which does not meet the definition of a covered event in the underlying policies." *Id.* at 1187. The court reasoned that, if the parties had intended to obligate the umbrella insurer to reimburse defense costs once the underlying policies were exhausted, they could have expressly said so. *Id.* In the absence of such language, the court

was unwilling to embrace "a strained interpretation" that ran counter to the parties' obvious intentions. *Id.*

¶53 Wilfley's argument hinges on a similar leap: treating an insured's inability to collect benefits for an occurrence covered under an underlying policy as though no coverage ever existed, thereby triggering a policy that applies only to occurrences "not covered" by that underlying policy. Like the Tenth Circuit, we decline to go down this primrose path.

¶54 Before parking this discussion, one final matter warrants consideration. Recall that the district court certified the question in part because of the division's decision in *Deisch*—a case that appeared to take the exit ramp everyone else passed. Unsurprisingly, Wilfley saddles up *Deisch* and rides it as far down the trail as it will go. We turn to that decision next.

E. *Deisch*: A Square Peg, Faulty Dictum, and Now Overruled Where It Conflicts with Our Decision

¶55 Wilfley asks us to cram a square peg into a round hole by attempting to fit a four-decade-old court of appeals decision into an analytical framework for which it was never designed. By Wilfley's telling, though, *Deisch* supplies the missing piece to the certified-question puzzle: an umbrella/excess insurer must defend whenever a primary insurer's coverage is uncollectible due to insolvency. In other words, Wilfley views *Deisch* as this case's twin. But what may appear, at first glance, to be two equal coins turns out, upon closer inspection, to belong to two

entirely different currencies. *Deisch* was brought by a different type of claimant, arose in a different procedural posture, and involved a different theory of liability. Different claimant, different posture, different theory. In a word, different. Trying to apply *Deisch*'s holding here would require us to stretch it well past its breaking point.

¶56 In *Deisch*, Ideal Mutual Insurance Company ("Ideal") and International Insurance Company ("International") each provided insurance coverage to Speed King Manufacturing Company, Inc. ("Speed King")—the former in the form of a primary policy, and the latter in the form of an umbrella/excess policy. 771 P.2d at 19. When a products liability action was brought against Speed King, Ideal hired Deisch and Marion, P.C. ("Deisch") to represent its insured. *Id.* During the litigation, Ideal became insolvent and went into receivership. *Id.* After Ideal failed to pay the legal fees incurred in defending Speed King, Deisch sued International—the umbrella/excess carrier—for those fees. *Id.* at 20. In doing so, Deisch pursued an implied-contract equitable theory of liability. *Id.*

¶57 Analyzing whether International was responsible for Speed King's defense costs through an equitable-relief lens, the division concluded—in strikingly cursory fashion—that International was on the hook for those fees. *Id.* It reasoned that (1) the firm had conferred legal services in a suit that could affect International's potential exposure; (2) International had benefitted from those

services because they had limited its potential exposure; and (3) it would have been "inequitable for International to retain the benefit of the law firm's work product without paying for it," just as it would have been inequitable for the firm to perform those services without compensation from anyone. *Id.*

¶58 The division could have stopped there. It didn't. Instead, with a similar wave of the hand, it briefly turned to the language of the International policy. *Id.* Much like the policies before us, that policy required the umbrella/excess carrier to defend claims arising from "any occurrence not covered, as agreed, by the underlying policies listed in [the schedule] . . . or not covered by any other underlying insurance collectible by the insured, but covered by the terms and conditions of the [International policy]." *Id.* Although the division acknowledged that the Ideal policy was a *scheduled underlying* policy that covered the products-liability claims, it nevertheless concluded that Ideal's insolvency—and the resulting non-collectibility of its coverage—triggered International's duty to defend. *Id.* The division offered no justification for allowing non-collectibility to transform an occurrence covered by a scheduled underlying policy into one "not covered" by that policy. *Id.* What's more, it appears to have welded coverage and collectibility into a single concept.

¶59 But because this contractual detour was unnecessary to the division's holding, which was grounded in equity, it is dictum with all the dials turned to

eleven. The district court here suggested as much before granting Wilfley's request to certify the question before us. *See Wilfley I*, at *9 (noting that *Deisch*'s contractual interpretation arguably constitutes dictum because "the decision was, at base, an unjust-enrichment/quasi-contract case where the court ultimately found 'it would be inequitable to permit [the excess insurer] to have the benefit of the defense provided by [the law firm] without paying for it'" (alterations in original) (quoting *Deisch*, 771 P.2d at 20)).

¶60 In any event, we are, of course, not bound by *Deisch*. To the extent it is incompatible with this opinion, it is now overruled.

III. Conclusion

¶61 The certified question was delivered to us framed by the divergent interpretive paths the parties charted. Only one of those paths accords with the intent reflected unambiguously in the Federal Policies' language, and that is the path we take.

¶62 We answer "no" to the certified question. Under the terms of the Federal Policies, Federal is not required to step into the shoes of a scheduled, insolvent underlying carrier and provide Wilfley with first-dollar indemnity or defense costs for the Underlying Actions. The Underlying Actions are covered by Reliance's scheduled underlying policies, and Reliance's insolvency does not transform them into "not covered" occurrences. The Federal Policies' coverage is

therefore not triggered. Having answered the certified question, we return the case to the federal district court to resume proceedings consistent with this opinion.