judgment filed by the C Co. plaintiffs. R Co. thereafter filed motions for partial summary judgment as against the C Co. plaintiffs, F Co. and E Co. R Co. maintained that it was entitled to coverage under its excess policies and that, pursuant to controlling California law and the language of the excess policies, it was required to satisfy only a single per occurrence limit of $2 million to reach the excess insurers' coverage. R Co. further claimed that vertical exhaustion was mandated by the excess policies and that recovery from the excess insurers was not precluded by its settlement under the I Co. primary policies. The trial court rendered judgment granting the motion for partial summary judgment filed by the C Co. plaintiffs, and the joinder motions filed by F Co. and E Co., and denying the motions for partial summary judgment filed by R Co. The court determined that the I Co. primary policies had been in force for four consecutive policy periods, each of which provided $2 million in coverage per occurrence, for a total of $8 million per occurrence for the years the I Co. policies were in effect. The court also determined that the underlying primary policies had to be horizontally exhausted before any of the C Co. plaintiffs' excess policies could attach to provide coverage. The court further determined that R Co. was required to be paid the limits of its underlying primary policies before it could access certain of the excess policies. The court determined that a 1982–1983 policy that was issued by F Co. was specifically excess to a certain excess policy issued by T Co. that provided $10 million in coverage above an additional $40 million in other underlying insurance. The court also determined that a 1984 policy and a 1985 policy that were issued by F Co. were general excess policies and that the limits of all three F Co. policies could not be triggered because certain underlying policies issued by S Co., T Co. and I Co. constituted other valid insurance that was collectible by the insured. The court determined that the coverage limits of a 1984–1985 excess policy and three 1985–1986 excess policies that were issued by E Co. could not be triggered because underlying policies issued by S Co., T Co., U Co. and I Co. constituted other valid insurance that was collectible by the insured. R Co. filed separate appeals challenging the trial court's judgment for the C Co. plaintiffs and for F Co. and E Co., and the C Co. plaintiffs cross appealed. *Held*:

1. The trial court improperly granted the motion for partial summary judgment filed by the C Co. plaintiffs, as the court's conclusion that their excess policies could never attach was incorrect because A Co. had paid R Co. more than the per occurrence limits of the underlying I Co. primary policies:

   a. The C Co. plaintiffs could not prevail on their claim that the I Co. primary policies had a total liability of $24 million over the 1959–1971 period, which was based on their assertion that the three year policy period endorsements to the primary policies were to be treated as annual periods that were subject to a per occurrence limit and that the policy period of each multiyear primary policy was defined as three consecutive annual periods: the trial court properly concluded that each I Co. policy

provided a per occurrence limit of $2 million that could not be annualized, the court having correctly determined that the limit of liability provision in each policy set a per occurrence limit for each three year period of the policy and an aggregate limit for multiple occurrences during any annual period; moreover, the provisions of the policies were not ambiguous, as the endorsements stated that the three year policy periods were made up of three annual periods, which was relevant in that rates were based on annual periods, nowhere in the policies or their endorsements was the policy period defined as three consecutive annual periods, and there was no language in the policies or their declarations that provided for coverage on a per occurrence, per year basis.

b. Contrary to the trial court's determination that the I Co. primary policies provided $8 million in coverage because their $2 million per occurrence limits were in force for four consecutive policy periods, R Co. was entitled to $2 million in coverage per policy for a total of $4 million in coverage; the policies' renewal certificates and endorsements constituted continuations of the original contracts such that the limit of liability was the amount stated in the contracts regardless of the number of years involved or the number of premiums that were paid.

c. This court concluded, after an examination of California law, that the trial court did not err in determining that R Co. was required to horizontally exhaust all of its primary insurance before the liability of its excess insurers could attach: this court determined that it would apply the rule of horizontal exhaustion set forth by the California Court of Appeal in *Community Redevelopment Agency* v. *Aetna Casualty & Surety Co.* (50 Cal. App. 4th 329) and other California cases that adhere to the settled rule under California law that an excess policy does not cover a loss until all primary insurance has been exhausted.

d. Although the trial court properly determined that payment of the full limits of the primary policies was necessary for exhaustion to be satisfied, it improperly determined that the necessary exhaustion of the I Co. primary policies remained unsatisfied: because R Co. received payment pursuant to the settlement of the I Co. primary policies for an amount that exceeded the $4 million in coverage under those policies, under the circumstances here, the obligations of the Continental plaintiffs may arise if it is determined on remand that Arrowood's payment satisfies the exhaustion requirement of those policies with respect to any one occurrence, and, as that determination also applied to the H Co. and London excess policies, the trial court improperly determined that a certain London market insurance policy was inaccessible and that no liability could attach under a certain H Co. umbrella policy.

2. R Co.'s claim that the trial court improperly granted F Co.'s motion for summary judgment was unavailing, as R Co. failed to exhaust certain of its excess insurance policies when it entered into settlement agreements with S Co. and T Co.; F Co.'s 1982–1983 and 1984 and 1985 excess policies applied only after the exhaustion of the T Co. and S Co. $10 million excess policies and $40 million in other underlying insurance, and even if R Co. had horizontally exhausted the $40 million in underlying