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determination that payment of the full limits of the primary policies was necessary for exhaustion to be satisfied was proper. The court, however, nevertheless improperly determined that the necessary exhaustion of the Royal primary policies remained unsatisfied. This court has determined that the exhaustion of all primary insurance is required before an excess insurer is obligated to respond; see part III B of this opinion; and that the Royal primary policies each provide coverage of \$2 million per occurrence for a combined total of \$4 million. See part III A of this opinion. Because Rohr has entered into and received payment pursuant to a settlement concerning the Royal primary policies for an amount that exceeds \$4 million, under the circumstances here, exhaustion by payment of the full amount of the limits of the Royal primary policies has been satisfied.²⁷ This determination applies to the Harbor and London excess policies with two noted distinctions. With respect to London policy V20621, which was found to be specifically excess to London policy V20620, the trial court found that policy V20621 will be immediately triggered upon exhaustion of policy V20620, but that because V20620 could not be accessed prior to exhaustion of all primary policies, which the court found could not take place, policy V20621 likewise would be inaccessible. In light of our determination of the liability limits of the Royal primary policies and that, because the amount of the settlement with and payment by Arrowood under

²⁷ The trial court noted that it made “no determination at [that] time that the primary policies are the *only* policies that must be exhausted before the Harbor and London policies will provide coverage. As previously noted, some of the policies may have other levels of coverage intervening between them and the primary policies. The present motions, however, seek only a determination of whether coverage under the Harbor and London policies is unavailable *because the primary policies have not been exhausted*. Accordingly, the court is not called upon at this time to determine whether any additional policies within Rohr’s insurance coverage portfolio must also be exhausted before coverage is available under the Harbor and London policies.” (Emphasis in original.)

NOTE: These pages (201 Conn. App. 717 and 718) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 15 December 2020.

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those policies exceeded their limits, exhaustion of those primary policies has been satisfied, we disagree with the trial court's conclusion regarding the inaccessibility of policy V20621.²⁸ Moreover, with respect to Harbor umbrella policy 108909, the trial court again determined that no liability under the umbrella policy could attach until the underlying primary insurance has been exhausted by payment of the liability limits. Given our determination regarding the exhaustion of the underlying insurance, liability under the Harbor umbrella policy attaches.

D

Conclusion

In summary, because Arrowood, as successor to Royal, has paid Rohr more than the per occurrence limits of its 1959 to 1971 policies, 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. Thus, the trial court's conclusion that the excess policies of the Continental plaintiffs could never attach was incorrect. Therefore, the trial court improperly granted the motion for partial summary judgment filed by the Continental plaintiffs and determined that they were entitled to judgment as a matter of law. Instead, the court should have granted the motion for summary judgment filed by Rohr with respect to the Continental plaintiffs.

IV

FEDERAL'S MOTION FOR SUMMARY JUDGMENT

In its appeal in Docket No. AC 41537, Rohr challenges the judgment of the trial court granting the motion for

²⁸ We further note that London policy V20621 lists Royal Indemnity Company as one of four primary insurers under the policy. See footnote 15 of this opinion. Our determination that the exhaustion requirement has been satisfied is limited to the exhaustion of the Royal primary policies only. See footnote 27 of this opinion.