Pa.R.C.P. 2102(b) provides that an action shall be brought against a political subdivision in its name. Plaintiffs, however, cited *Patera et al. v. Charleroi School District,* 22 Pa. Cmwlth. 451, 349 A.2d 529 (1975), as requiring the joinder of the individual supervisors and members. In that case the court was called upon to construe the Open Meeting (Sunshine) Law, 65 Pa.C.S.A. §261 et seq. In so doing, the court found that the individual members of the school board in question were necessary parties. Considering the nature of that act, the purpose of which is to require the individual members to meet together in public, we understand why they must each be made a party. Under the Sunshine Law, merely enjoining the municipal subdivision might not present the individual members from getting together in private. To prevent such violations, they should be individually enjoined.

It is unexplained to us by the plaintiffs, how, if the court restrained the township and the authority from going ahead with the project, the individual supervisors or authority members could accomplish it. No individual or personal liability of the supervisors or members is alleged. In *Warrington Sewer Co. v. Achenbach et al.,* 25 Bucks Co. L. Rep. 176, 177 (1974) and in *Zambelli v. Neshaminy School District,* 4 D.&C.3d 577, 578 (Bucks County, 1978) the individuals were dropped from the suits. The idea that suits should be brought against the political subdivision by name was decided early in the case of *Wilson v. The Commissioners of Huntingdon County,* 7 W.&S. 197 (1844).

We would grant the motion to strike the individual supervisors and members of the authority.

ORDER OF COURT

Sptember 5, 1985, the demurrers are sustained, the individual supervisors and members of the municipal authority are dropped as defendants and the caption is corrected to show that the plaintiff is Constantine Stephano and Robert Quick, trading as

Franklin Properties. The plaintiff is not granted the right to plead over. The other preliminary objections are moot.*

* Editor's Note — In the companion case, named in the caption of this report, the order read as follows:

September 5, 1985, the demurrers are sustained, and the individual supervisors and members of the municipal authority are dropped as defendants. The plaintiff is not granted the right to plead over. The other preliminary objections are moot.

DAYWALT V. AMERICAN STATES INSURANCE COMPANY, C.P. Franklin County Branch, No. A.D. 1984 - 79

Insurance - Judgment on Pleadings - Ambiguity of Policy

1. A motion for judgment on the pleadings is limited exclusively to the pleadings themselves and is in the nature of a demurrer.

2. Construction of an insurance policy is a matter of law and is properly before the court on a motion for judgment on the pleadings.

3. A policy is ambiguous only if reasonably intelligent men on considering it in the context of the entire policy would honestly differ as to its meaning.

David S. Keller, Esquire, counsel for plaintiff

William A. Addams, Esquire, counsel for defendant

OPINION AND ORDER

EPPINGER, P.J., September 11, 1985:

On February 11, 1971, defendant, American States Insurance Company (American), issued a Special Risks Accident Policy [1] to the South Mountain Fireman's Relief Association (at that time known as the South Mountain Volunteer Fire Company & Relief Fund). The policy contained a "Heart Disease or Cardiac Malfunction Rider," [2] (Rider) which provided coverage for a heart attack suffered as a result of assisting at a fire if, "the Insured Member has never had any previous manifestations of heart disease or cardiac malfunction."[3]

[1] Plaintiff's Complaint, Exhibit A.
[2] Plaintiff's Complaint, Exhibit A, p. 5.
[3] Plaintiff's Complaint, Exhibit A, p. 5.

Plaintiff, Debra Daywalt's (Daywalt), decedent, Dale E. Daywalt, was a member of the South Mountain Fireman's Relief Association. While assisting at a fire on July 28, 1982, Mr. Daywalt suffered a fatal heart attack. Approximately two and a half months prior to the date of his death, Mr. Daywalt had suffered a heart attack.

Daywalt filed suit on April 9, 1984, claiming the Rider was ambiguous and American was liable to pay her the sum of $12,000, according to the terms of the policy. American has filed a motion for judgment on the pleadings which is before us for determination.

A motion for judgment on the pleadings, pursuant to Pa.R.C.P. 1034, is in the nature of a demurrer and American's right to prevail must be so clear that a trial would be a fruitless exercise. *Eagle Downs Racing Ass'n, Inc. v. Commonwealth, State Harness Racing Commission,* Pa. Cmwlth. , 457 A.2d 1008, 1009 (1983); *Puleo v. Broad Street Hospital,* 267 Pa. Super. 581, 584, 407 A.2d 394, 396 (1979). This motion is limited exclusively to the pleadings themselves and we cannot consider any outside material. *Harvey v. Hansen,* 299 Pa. Super. 474, 481, 445 A.2d 1228, 1231, F.N. 7 (1982). Our consideration is inherently limited to well-pleaded facts, admissions, and documents attached to pleadings. *Balush v. Borough of Norristown,* 292 Pa. Super. 416, 419, 437 A.2d 453, 454 (1981).

We must accept as true Daywalt's well-pleaded facts and the well-pleaded facts contained in American's new matter not put in issue by Daywalt. *Commonwealth ex rel. Dawson v. Bd. of Probation and Parole,* 17 Pa. Cmwlth. 550, 552, 333 A.2d 796, 797 (1975). We must consider the pleadings and inferences therefrom in the light most favorable to Daywalt, the nonmoving party. *Thomas Merton Center v. Rockwell International Corp.* 280 Pa. Super. 213, 216, 421 A.2d 688, 689 (1980), reversed on other grounds 497 Pa. 460, 442 A.2d 213 (1981). Construction of an insurance policy is a matter of law and is properly before us on a motion for judgment on the pleadings. *Vale Chemical Co. v. Hartford Accident & Indemnity Co.,* Pa. Super. , 490 A.2d 896, 899 (1985).

Daywalt claims the rider is ambiguous for two reasons. Initially, she claims the rider could be read to cover only previous manifestations of heart disease or cardiac malfunctions suffered prior to the effective date of the policy, February 11, 1971.

Daywalt's second contention relates to the last paragraph of the rider. It states, "The aggregate payable for weekly total Disability Benefit and Medical Expense shall not in any event exceed $1,000.00 for one or more disabling cardiac malfunctions." [4] Daywalt contends that the language, "for one or more," is ambiguous in that it is inconsistent with the rider's purpose of excluding benefits to any insured member who has previously suffered heart disease or cardiac malfunction.

Our goal in interpreting the insurance contract between the parties is, "to ascertain the intent of the parties as manifested by the language of the written instrument." *Standard Venetian Blind Co. v. American Empire Ins. Co.,* 503 Pa. 300, 305, 469 A.2d 563, 566 (1983). If we determine that the policy language is either ambiguous, obscure, uncertain or susceptible of more than one construction, the language must be construed most strongly against American, and the construction most favorable to the insured must be adopted. *Aetna Casualty and Surety Co. v. Drake,* Pa. Super. , 494 A.2d 381, 382 (1985).

The rider is ambiguous, "only if reasonably intelligent men on considering it in the context of the entire policy would honestly differ as to its meaning." *Garber v. Traveler's Insurance Co.* 280 Pa. Super. 323, 325, 421 A.2d 744, 745 (1980).

> "A contract is ambiguous if, and only if, it is reasonably or fairly susceptible of different constructions and is capable of being understood in more senses than one and is obscure in meaning through indefiniteness of expression or has a double meaning." *State Highway and Bridge Authority v. E.J. Albrecht Co.,* 59 Pa. Cmwlth. 246, 251, 430 A.2d 328, 330 (1981).

We can also consider, "whether alternative or more precise language, if used, would have put the matter beyond reasonable question." *Commonwealth, Department of Transportation v. Bracken Construction Co.,* , Pa. Cmwlth. , 457 A.2d 995, 997 (1983).

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[4] Plaintiff's Complaint, Exhibit A, p. 5.

After consideration of the above-stated principles and the policy in its entirety, we find the rider to be clear and unambiguous. Parts two and three of the policy concern medical expense benefits and total disability benefits, respectively. Both provisions specify limits on the monetary benefits which can be received. The provision of the rider in question is also attempting to specify a monetary limit on the benefits to be received in case of heart disease or cardiac malfunction suffered as a result of assisting at the scene of a fire. The provisions do not broaden coverage. The language in question merely specifies that $1,000 is the most that can be recovered by an insured for a disabling cardiac malfunction.

As for Daywalt's other contention, that the rider could be read to cover only previous manifestations of heart disease or cardiac malfunction prior to the effective date of the policy, February 11, 1971, we find that the rider is not susceptible of this construction. It is clear that the rider is meant to exclude coverage to any insured member who had any previous manifestations of heart disease or cardiac malfunction *before the occurrence of the fire* he was injured in. (emphasis added). "It is not the function of the court to rewrite a policy or give its terms a construction in conflict with their plain meeting." *Garber,* supra, at 325, 745.

We find no ambiguity in the policy. As Daywalt admitted that the decedent, Dale E. Daywalt, suffered an acute myocardial infarction two and a half months prior to his death, [5] we grant American's motion for judgment on the pleadings.

ADJUDICATION

September 11, 1985, the motion filed by the defendant, American States Insurance Company, for judgment on the pleadings is granted.

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[5] Plaintiff's Reply to Defendant's New Matter, Paragraph 16.