FILED
MAR 26 1985
CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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IOWA STATE COMMERCE COMMISSION,	)	
Petitioner/Cross-Appellant,	)	Filed March 26, 1985
vs.	)	
D & D GRAIN COMPANY,	)	
Respondent,	)	
and	)	4-565 / 84-961
IGF INSURANCE COMPANY,	)	
Respondent-Appellant.	)	

Appeal from the Iowa District Court for Fremont County - Glen M. McGee, Judge.

Respondent surety appeals and petitioner cross-appeals from judgment entered upon the interim report of petitioner as receiver for a bonded grain storage facility. AFFIRMED IN PART AND REVERSED IN PART.

Larry Seckington and Michael S. Schroeder of Brick, Seckington, Bowers, Swartz & Gentry, P.C., Des Moines, for respondent-appellant.

Thomas J. Miller, Attorney General, and Susan Allender, Assistant Attorney General, for petitioner/cross-appellant.

Considered by Oxberger, C.J., and Donielson and Snell, JJ.

DONIELSON, J.

Respondent surety appeals and petitioner cross-appeals from the judgment entered upon the interim report of petitioner as receiver for a bonded grain storage facility. Respondent asserts that the term "proceeds" as used in Iowa Code section 543.4(4) includes interest on the amount realized from the sale of commodities stored. Therefore, it is argued that respondent's liability should not have been determined without consideration of the amount of interest earned. On cross-appeal, petitioner commission asserts that interest should have been awarded from the date of the commencement of the action, pursuant to Iowa Code section 535.3. We affirm in part and reverse in part.

On April 25, 1983, the Iowa State Commerce Commission was appointed receiver of a bonded grain storage facility. The commission sold the commodities stored at the facility for $554,311.27. The proceeds were invested through the Treasurer of the State of Iowa, pending distribution to valid grain claimants. As of March 15, 1984, the sale proceeds had earned interest in the amount of $43,106.43.

On March 27, 1984, the commission filed its Interim Report and Recommendations of Receiver. The commission recommended that the liability of IGF Insurance Company, as surety on the warehouse bond, be determined without consideration of the interest earned from the grain sale proceeds. IGF filed objections and a hearing was held. The trial court determined that the surety's liability could not be offset by the accrued interest, and that no interest would be assessed on IGF's liability. IGF has appealed and the commission has cross-appealed.

In Iowa State Commerce Commission v. Manilla Grain Terminal, Inc., No. 84-771 (Iowa Febr. 13, 1985), the Iowa Supreme Court addressed both issues which are now before this court. In accordance with that decision, we hold that IGF's liability was properly determined without consideration of the interest earned on

the grain sale proceeds. We further hold that, pursuant to section 535.3, IGF is required to pay interest on its bond liability at the rate of ten percent per year from the commencement of the action.

IGF asserts that we should not consider the cross-appeal since the commission failed to comply with Iowa Rule of Appellate Procedure 10(b). It is argued that pursuant to this rule the commission was required to file a statement of issues it intended to present on appeal. We are unpersuaded by this argument. By its very language, rule 10(b) imposes such a duty on the appellant, not the appellee.

AFFIRMED IN PART AND REVERSED IN PART.