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## Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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### Executive Summary (1 minute read)

**Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Ltd (FCAFC)** - representative proceedings - common fund order - orders made to impose burden of costs equally on all class members who stood to benefit from proceeding, not just funded class members

**Timbercorp Finance Pty Ltd (In Liq) v Allan (Costs) (VSC)** - costs - service - two applications - plaintiff enjoyed overall success but on basis of competing factors Court determined parties were to bear own costs

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## Summaries With Link (Five Minute Read)

### **Money Max Int Pty Ltd (Trustee) v QBE Insurance Group Ltd [2016] FCAFC 148**

Full Court of the Federal Court of Australia

Murphy, Gleeson & Beach JJ

Representative proceedings - common fund order - applicant sought orders under s33ZF *Federal Court of Australia Act 1976* (Cth) to apply litigation funding terms obliging all members to contribute equally to legal and litigation funding costs by paying funder - QBE contended common fund order would lead to 'substantial and unjustified increase in the aggregate funding commission' compared to funding commission payable under funding equalisation order, would create financial hurdle to case's resolution, would leave class members with lower proportion of settlement money, and that Court did not have power to make orders - *Australian Securities and Investments Commission Act 2001* (Cth) - *Corporations Act 2001* (Cth) - *Australian Consumer Law* (Cth) - *Federal Court of Australia Act 1976* (Cth) - *Federal Court of Australia Amendment Bill 1991* (Cth) - held: Court satisfied it had power to make orders - Court made orders whose effect was to impose burden of legal and litigation funding commission costs equally on all class members who stand to benefit from proceeding - orders made.

[Money Max](#)

### **Timbercorp Finance Pty Ltd (In Liq) v Allan (Costs) [2016] VSC 633**

Supreme Court of Victoria

Derham AsJ

Costs - Court determined two applications - plaintiff had sought to set aside service of writ - defendant had sought to extend validity of writ for service - Court concluded writ's service ineffective due to non-compliance with *Service and Execution of Process Act 1992* (Cth) but that it was appropriate to extend writ's validity for service under r5.12 *Supreme Court (General Civil Procedure) Rules 2015* (Vic) - determination of costs - held: plaintiff had achieved aim of continuing with proceedings which was the 'proper characterisation of the overall success' - however there were competing factors to be weighed against conclusion - Court satisfied that it was appropriate for each party to bear own costs.

[Timbercorp](#)



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## **Spirits of the Dead**

By [Edgar Allan Poe](#)

### **I**

Thy soul shall find itself alone  
'Mid dark thoughts of the gray tombstone—  
Not one, of all the crowd, to pry  
Into thine hour of secrecy.

### **II**

Be silent in that solitude,  
Which is not loneliness—for then  
The spirits of the dead who stood  
In life before thee are again  
In death around thee—and their will  
Shall overshadow thee: be still.

### **III**

The night, tho' clear, shall frown—  
And the stars shall look not down  
From their high thrones in the heaven,  
With light like Hope to mortals given—  
But their red orbs, without beam,  
To thy weariness shall seem  
As a burning and a fever  
Which would cling to thee for ever.

### **IV**

Now are thoughts thou shalt not banish,  
Now are visions ne'er to vanish;  
From thy spirit shall they pass  
No more—like dew-drop from the grass.

### **V**

The breeze—the breath of God—is still—  
And the mist upon the hill,  
Shadowy—shadowy—yet unbroken,  
Is a symbol and a token—  
How it hangs upon the trees,  
A mystery of mysteries!?

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