"The court, having considered the strong representations made in the request for review, appreciates the concerns upon which the request is predicated. However, we conclude that in a proper exercise of his discretion in handling pretrial matters under the rules of the court (Rules 12 and 112), the trial judge must have considerable latitude to apply that discretion to handle a case, especially a large case such as this one with several thousand claimants. We do not believe that he has abused his discretion in altering the sequence of pretrial proceedings to fit developments which they have revealed as they have been pursued. In the long run, we do not believe that the defendants will be prejudiced by this order, although in the immediate posture of the case it does result in some parties bearing a greater preliminary burden than others. Upon consideration of the request for review, the response, and all supporting papers, without oral argument,

"IT IS THEREFORE ORDERED that the request for review is granted but that upon review the order of the trial judge entered September 3, 1976, is affirmed."

No. 102-63. NOVEMBER 12, 1976

Jessie Short, et al.

Pleading and practice; trial judges; authority of trial judges; dispositive motions, directions to file.—On November 12, 1976 the court entered the following order:

Harold C. Faulkner, Attorney for Certain Plaintiffs. *William C. Wunsch, Wallace Sheehan, Faulkner, Sheehan & Wunsch, Heller, Ehrman, White & McAuliffe*, of counsel.

Herbert Pittle, with whom was *Assistant Attorney General Peter A. Taft*, and *Jerry C. Straus*, for defendant and defendant-intervenor. *Wilkinson, Cragun & Barker, Alan I. Rubinstein, Michael B. Green, Mandich, Clark & Barker*, and *Wesley L. Barker*, of counsel.

Before SKELTON, *Judge*, Presiding, NICHOLS and BENNETT, *Judges*.

"This case arises on a request for review by defendant United States and defendant-intervenor, the Hoopa Valley

Tribe of Indians, of an order by the trial judge entered October 8, 1976, reaffirming his order of May 26, 1976. The latter order mandated that the defendants and the plaintiffs file motions for summary judgment on a schedule of dates outlined therein. The trial judge had previously entered orders which required defendants to respond to certain declaration-questionnaires filled out by plaintiffs to show their entitlement to recovery and required plaintiffs to reply thereto. Many of these papers having been submitted, the trial judge concluded that it would contribute to the good order of handling these claims—almost 4,000 in number—for the defendants to file motions for summary judgment where the responses suggested that legal issues might lead to disqualification of some plaintiffs, or for plaintiffs to so file where claimed eligibility was substantially uncontroverted within the interpretation of the opinion of the court in *Short* v. *United States* on October 17, 1973 (202 Ct. Cl. 870, 486 F. 2d 561, *cert. denied*, 416 U.S. 961 (1974)). Certain plaintiffs were relieved by an order on September 3, 1976, from filing replies until resolution of these dispositive motions clarified the situation. Plaintiffs, on September 1, 1976, filed two motions for summary judgment pursuant to said order of May 26, 1976, but defendants challenge the requirement to do so, alleging no authority in the trial judge to require the filing of a dispositive motion, alleging, alternatively, that his order was actually permissive and not mandatory, and, finally, that the order, if enforced, will shift the burden of proof in this adversary proceeding improperly to defendants. The trial judge has certified the request for review to us for consideration as one of controlling importance to the conduct of the case. Rule 53(c)(2)(i).

"While Rule 101(b) of the Court of Claims is permissive in its tenor and provides that a defendant may move for summary judgment, we hold that it must be considered in connection with Rule 13 which gives the trial judges the widest latitude in proper exercise of their discretion to regulate proceedings before them, subject to review by the court. We find no abuse of that discretion in his order requiring defendants to test out the legal defenses they have raised which, if

successful, will resolve many of the claims without further pretrial efforts to develop factual issues. Further, the language of the underlying order of May 26, 1976, is clearly mandatory. It says defendants "are directed" to file motions for summary judgment, and sets a date therefor. Nor do we agree that this procedure shifts the burden of proving plaintiffs' claims to defendants. What is at issue is the legal validity of criteria proposed by defendants to defeat the claims. It is not an uncommon practice in this and in other courts for such legal issues to be resolved, where dispositive, in advance of adjudication of issues on the merits. Upon consideration of the request for review, plaintiffs' response, and defendants' reply, without oral argument,

"IT IS THEREFORE ORDERED that the request for review is granted but that upon review the order of the trial judge entered October 8, 1976, is affirmed. The parties are instructed to comply with the directions of the trial judge in filing dispositive motions pursuant to such a time schedule as he requires.

"IT IS FURTHER ORDERED that the orders of the court of October 1 and October 18, 1976, directing that the trial judge rule in the first instance on any then pending dispositive motions, be and they are amended to include reference to him, pursuant to Rule 54, of any and all such motions now or hereafter filed in this case, subject to review as provided by the rules."

No. 453–73. NOVEMBER 12, 1976

Hart Metal Products Corporation

Taxes; personal holding company income; interest on tax deficiency.—On November 12, 1976 the court entered the following order:

John L. Carey, attorney of record, for plaintiff. *Stephen A. Seall, Tornburg, McGill, Deahl, Harman, Carey & Murray*, of counsel.

Robert S. Watkins, with whom was *Assistant Attorney General Scott P. Crampton*, for defendant. *Theodore D. Peyser* and *William Kalish*, of counsel.