

Charles LaDUKE, Plaintiffs-Appellees,
v.
Alan C. NELSON, etc., et al., Defendants-Appellants.

Nos. 83-3608, 84-4148.

United States Court of Appeals, Ninth Circuit.

August 7, 1986.

Michael J. Fox, Skellenger, Ginsberg & Bender, Seattle, Wash., for plaintiffs-appellees.

Marshall Tamal Golding, U.S. Dept. of Justice, Washington, D.C., for defendants-appellants.

310 *310 Before FARRIS, ALARCON and FERGUSON, Circuit Judges.

ORDER

LaDuke v. Nelson, 762 F.2d 1318 (9th Cir.1985), filed June 10, 1985, is modified as follows:

The last sentence of the first full paragraph of the opinion, 762 F.2d at 1321, is changed to: "We affirm in part, vacate in part, and remand."

The fifth full paragraph on 762 F.2d at 1333, which begins "Finally," is deleted. The following paragraphs are substituted:

"Finally, the INS charges that the hourly fee award (\$100 and \$125) to class counsel unreasonably exceeded the normal fee of \$75 per hour under the EAJA. The EAJA authorizes exceeding the \$75 `cap' on attorney fees based on either a cost of living increase or a `special factor, such as the limited availability of qualified attorneys for the proceedings.' 28 U.S.C. § 2412(d)(2)(A)(ii). The court did not abuse its discretion in finding a special factor existed for breaching the \$75 cap based on expert testimony. Accord Action on Smoking and Health v. CAB, 724 F.2d 211, 219 (D.C.Cir.1984). Accordingly, we affirm the award of attorney's fees and the hourly rates.

"We vacate the district court's use of the 20% multiplier, however, and remand the issue of the propriety of a multiplier to the district court for such further proceedings, findings, and orders as it may deem necessary in light of the recent Supreme Court decisions in Pennsylvania v. Delaware Valley Citizens' Council for Clean Air, 478 U.S. 546, 106 S.Ct. 3088, 92 L.Ed.2d 439 (1986); Library of Congress v. Shaw, 478 U.S. 310, 106 S.Ct. 2957, 92 L.Ed.2d 250 (1986); City of Riverside v. Rivera, 477 U.S. 561, 106 S.Ct. 2686, 91 L.Ed.2d 466 (1986)."

Section IV. of the opinion, 762 F.2d at 1333, is changed to: "We affirm the district court's issuance of an amended injunction and the award of fees and costs and the hourly rates, but vacate and remand the use of the 20% multiplier."