

09:20AM 1 A. I did.

09:20AM 2 Q. And you also looked at certain opinions of the E. P. A.  
09:20AM 3 with respect to the condition of the water affecting -- the  
09:20AM 4 water of these plaintiffs?

09:20AM 5 A. I'm sorry. You said certain opinions.

09:20AM 6 Q. Yeah, opinions and commentary -- I will add that -- by the  
09:20AM 7 E. P. A. with respect to the condition of my client's water.

09:20AM 8 A. I looked at some --

09:20AM 9 MS. BARRETTE: Objection, Your Honor.

09:20AM 10 THE COURT: Nature of the objection?

09:20AM 11 MS. BARRETTE: I believe this goes beyond the scope  
09:20AM 12 of the motion in limine. May we approach?

09:20AM 13 THE COURT: Certainly. Let's come to sidebar and  
09:20AM 14 discuss this.

09:21AM 15 (The following discussion took place at sidebar:)

09:30AM 16 MS. BARRETTE: Her question was, have you looked at  
09:30AM 17 opinions by the E. P. A. Now, we specifically want -- one of  
09:30AM 18 things Ms. Lewis brought out and I believe the motion in limine  
09:30AM 19 mentioned we were going to get into a debate over different  
09:30AM 20 opinions of the E. P. A. one way or the other. And it was  
09:30AM 21 raised whenever there was a letter that was given to Mrs.  
09:30AM 22 Hubert about, you know, what the D. E. P. -- what the letter  
09:30AM 23 said is that you could not get into issues of E. P. A. opinions  
09:30AM 24 in this case.

09:30AM 25 My concern is where she's going is to different E. P.

09:30AM 1 A. opinions about the plaintiffs' water which is the subject of  
09:30AM 2 a motion in limine.

09:30AM 3 MS. LEWIS: As far as I understand I am not  
09:30AM 4 completely barred -- as it is a fact that the E. P. A. did  
09:30AM 5 conduct testing. As it is a fact that the -- this witness did  
09:30AM 6 testify that he did review certain information that was  
09:30AM 7 provided by the E. P. A. Now, the problem comes in is once  
09:30AM 8 there's other -- there are other opinions by the E. P. A. it  
09:30AM 9 gets a little more unacceptable, but there's nothing -- it's  
09:30AM 10 just -- I am vibrating off of what was disclosed during  
09:30AM 11 deposition, and I believe there was reference to it during Ms.  
09:30AM 12 Barrette's direct. So I am not looking to -- you know --

09:30AM 13 THE COURT: I thought on direct we covered E. P. A.  
09:30AM 14 test results among other results. The challenge I face with  
09:30AM 15 respect to things that are E. P. A. opinions are from what I  
09:30AM 16 understand of the record of these proceedings, the only view  
09:30AM 17 that E. P. A. has expressed to the parties is correspondence  
09:30AM 18 they send out telling parties that their water is safe. I  
09:30AM 19 understand that at some point in time you had received a copy  
09:30AM 20 of what has been described as a leaked E. P. A. Power Point  
09:30AM 21 relating to issues in the marcellus shale.

09:30AM 22 And I understand that Power Point was produced at a  
09:30AM 23 later period of time, but I don't have anything before me  
09:30AM 24 suggesting that E. P. A. changed its position that it announced  
09:30AM 25 to the plaintiffs regarding the quality of their water.

09:30AM 1 Moreover, the Power Point you have while you -- you were able  
09:30AM 2 to obtain an authentication OF IT from E. P. A., it is not a  
09:30AM 3 self-explanatory document, and it's a highly redacted document,  
09:30AM 4 and it is a document that while it appears to have reflected  
09:30AM 5 some sort of ongoing discussions within the agency doesn't  
09:30AM 6 appear to reflect some final agency position altering its views  
09:30AM 7 on the issue of the safety of these parties water. That'S why  
09:30AM 8 haven't permitted you to go there because, as I said, the  
09:30AM 9 document isn't self-explanatory.

09:30AM 10 So what I think we ought to do is limit ourselves to  
09:30AM 11 discussing E. P. A. testing.

09:30AM 12 MS. LEWIS: Sure. That is what the E. P. A. is  
09:30AM 13 doing. It's -- you know, it's summarizing, analyzing,  
09:30AM 14 presenting the data and -- as the basis for its findings. I  
09:30AM 15 will state --

09:30AM 16 THE COURT: Well, its findings were there was nothing  
09:30AM 17 wrong with the water of the plaintiffs. Is that where you want  
09:30AM 18 us to go?

09:30AM 19 MS. LEWIS: I'm sorry, Your Honor, with all respect.  
09:30AM 20 It's an ongoing investigation. It is not over.

09:30AM 21 THE COURT: Well, excuse me. Do you have evidence  
09:30AM 22 that E. P. A. has changed its position on the quality of the  
09:30AM 23 plaintiff's water? Have they announced a different position,  
09:30AM 24 and do you have competent evidence of that? If you do, I  
09:30AM 25 should have seen that weeks or months ago. You provided me

09:30AM 1 with a copy of a highly redacted leaked Power Point that  
09:30AM 2 doesn't seem to reflect any final E. P. A. position relating to  
09:30AM 3 the water of these individuals and that requires a great deal  
09:30AM 4 of explanation and none of which has been provided.

09:30AM 5 MS. LEWIS: I wasn't even remotely thinking of -- you  
09:30AM 6 know --

09:30AM 7 THE COURT: It sounds like we are thinking the same  
09:30AM 8 thing. You can ask about test results.

09:30AM 9 MS. LEWIS: Okay. I just wish to state that this  
09:30AM 10 witness reviewed -- there is -- that isotopic study which, you  
09:30AM 11 know, is -- now has the forever, you know, leaked report  
09:30AM 12 moniker, is that's -- that's a document. Then there's a 677  
09:30AM 13 page document after that that was reviewed. I'm just -- you  
09:30AM 14 know, it's --

09:30AM 15 THE COURT: And while -- so --

09:30AM 16 MS. LEWIS: It's about the plaintiffs.

09:30AM 17 THE COURT: I don't know if it's about the  
09:30AM 18 plaintiffs. The document I received was redacted, which didn't  
09:30AM 19 -- and this is the first -- this is the first that  
09:30AM 20 representation has been made to me, and this would be a  
09:30AM 21 terribly late time in these proceedings to making those sort of  
09:30AM 22 representations.

09:30AM 23 If you wish to cross-examine him some about other  
09:30AM 24 isotopic analyses, I think that may be fair game.

09:30AM 25 MS. LEWIS: Sure.

09:30AM 1 THE COURT: But if you're endeavoring -- I think that  
09:30AM 2 would be appropriate if you were to say are you aware that  
09:30AM 3 there was some other isotopic analysis, did you take that into  
09:30AM 4 account, but if you start to try to get into agency opinions on  
09:30AM 5 ultimate issues, I will close that door.

09:30AM 6 MS. LEWIS: It was not my intention to do that.

09:30AM 7 THE COURT: That's why we come to sidebar to draw  
09:30AM 8 those lines. I have drawn one, but, Ms. Barrette, if you want  
09:30AM 9 to be heard further on that.

09:30AM 10 MS. BARRETTE: I will just say that when we were  
09:30AM 11 preparing our witnesses for trial, we explained there are  
09:30AM 12 certain things that the court has said we cannot talk about.  
09:30AM 13 So to be presenting the questions about E. P. A. opinions when  
09:30AM 14 that was unfair to the witness as well.

09:30AM 15 THE COURT: I understand although there are some sort  
09:30AM 16 of other analyses. I think that certainly Ms. Lewis should be  
09:30AM 17 able to cross-examine, did you consider this analysis, that  
09:30AM 18 analysis. I don't want us getting into ultimate agency  
09:30AM 19 opinions for a variety of reasons, not the least of which as I  
09:30AM 20 understand your point, Ms. Lewis, that you believe this is an  
09:30AM 21 ongoing effort, and I am sure the regulatory agencies are  
09:30AM 22 engaging in an ongoing effort. But the problem is right now as  
09:30AM 23 I understand it the position of the agencies is the water is  
09:30AM 24 safe. That's -- that certainly is what I think both D. E. P.  
09:30AM 25 and E. P. A. conveyed to these plaintiffs.

09:30AM 1 MS. LEWIS: Your Honor, it's just a massive thing  
09:30AM 2 that, you know, we just walked -- so in other words, I could  
09:30AM 3 not possibly agree with what you just said based on  
09:30AM 4 information, but that is not the case.

09:30AM 5 THE COURT: Certainly if the E. P. A. or D. E. P. has  
09:30AM 6 communicated an agency position that this water is not safe,  
09:30AM 7 that evidence should have been presented, and it has not. I  
09:30AM 8 understand that this is an ongoing process. I think that our  
09:30AM 9 conversation precisely illustrates why you want to stay away  
09:30AM 10 from this because the defendants right now probably have got  
09:30AM 11 the best of the official agency positions.

09:30AM 12 Your view is that is an ongoing work in progress and  
09:30AM 13 -- but we're not going to end up trying agency deliberative  
09:30AM 14 processes here. So I think you should limit your examination  
09:30AM 15 to asking the specific questions about particular analyses, did  
09:30AM 16 you consider this, did you consider that, without trying to  
09:30AM 17 draw witnesses into opining on agency opinions. Is that fair  
09:30AM 18 enough? Thank you.

09:30AM 19 (The discussion at sidebar concluded.)

09:30AM 20 BY MS. LEWIS:

09:30AM 21 Q. Part of the testimony you presented yesterday to the jury  
09:30AM 22 had to do with your isotopic analysis. Is that safe to say?

09:30AM 23 A. Yes, it's safe to say.

09:30AM 24 Q. And your isotopic analysis is there's a -- there's a mixed  
09:30AM 25 gas composition; is that correct?