60. If the judge had not felt so constrained he would have looked at the issues of foreseeability and breach more broadly. Anglia called no factual evidence about what it knew or considered in the late 1960s. Instead Mr Feeny places reliance on certain answers which he elicited from Mr Brady in cross-examination. He has set these passages out in section 5 of his skeleton argument and taken us through them in his oral submissions. Unlike the judge we have not heard the oral evidence of the experts. Nor do we have a full transcript of the evidence called. I have come to the conclusion, with considerable regret, that the Court of Appeal is not in a position to decide the liability issue on the basis of the material before us.

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