

THE PACE OF TESTIMONY

CASE STUDY

Robert “Bob” Smith is a senior defense partner specializing in complex products liability at a commercial law firm. Across thirty years of practice, Bob has developed a reputation as an effective litigator. His skill was on display during the deposition of Gary Miller, a factory worker who suffered a severe arm injury operating a hydraulic press.

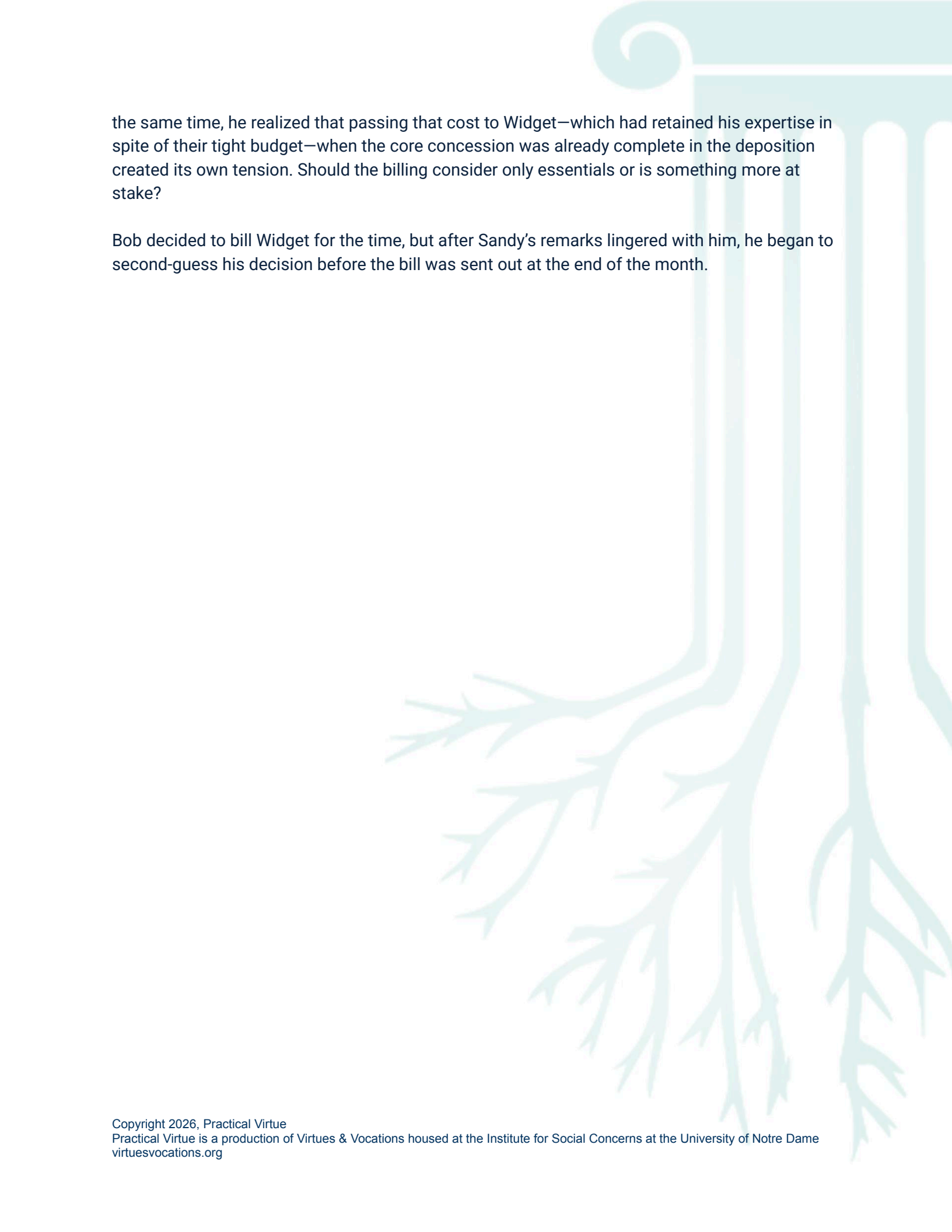
Widget, a small and local family-owned business with thin margins, was Bob’s client and one of several defendants named in the suit. Widget had supplied one particular part for the press. For his deposition of Gary, Bob was accompanied by Sandy Nowak, a senior associate managing the case’s billing and discovery files. Gary seemed eager for the opportunity to explain what happened to him and gave rambling answers to each question. In spite of this, twenty minutes into the deposition, Bob had managed to secure statements about the part of the machine at issue to his client. Gary’s answers to those questions revealed to Bob that Widget’s part was not at issue in the malfunction. Bob was confident that the factual statements by Gary would be sufficient for Widget to receive a summary judgment on its portion of the case and leave the other defendants to contest their share of liability.

In that moment, his objective as Widget’s defense attorney was achieved, unbeknownst to Gary. Technically, Bob had every justification to say, “No further questions,” terminate the deposition, and save the client time and money.

Yet Gary was still talking passionately about his work, the machine, and his expertise developed over years. Bob noticed Gary’s trembling hands and the almost palpable need to share his story more. Rather than concluding the examination, Bob allowed Gary to continue speaking. Gary continued gushing about his situation and pain since the accident, speaking movingly and at length. In spite of other pressing matters, Bob made eye contact, listened, and let Gary go on with little interruption for another hour, periodically asking polite follow-up questions.

Back at the office, Sandy presented the draft billing invoice for Widget, highlighting the \$750-per-hour entry for the deposition. “Bob, you secured the exonerating testimony in the first twenty minutes,” Sandy noted. “The extra hour added nearly \$750 to Widget’s bill for testimony that was unnecessary for our defense. Should we bill Widget for that time?”

Sandy suggested writing off the hour as non-billable time, but Bob hesitated. “Letting him go on was the right thing to do,” Bob replied. “It was my professional judgment, and we bill for it.” At

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the same time, he realized that passing that cost to Widget—which had retained his expertise in spite of their tight budget—when the core concession was already complete in the deposition created its own tension. Should the billing consider only essentials or is something more at stake?

Bob decided to bill Widget for the time, but after Sandy's remarks lingered with him, he began to second-guess his decision before the bill was sent out at the end of the month.