

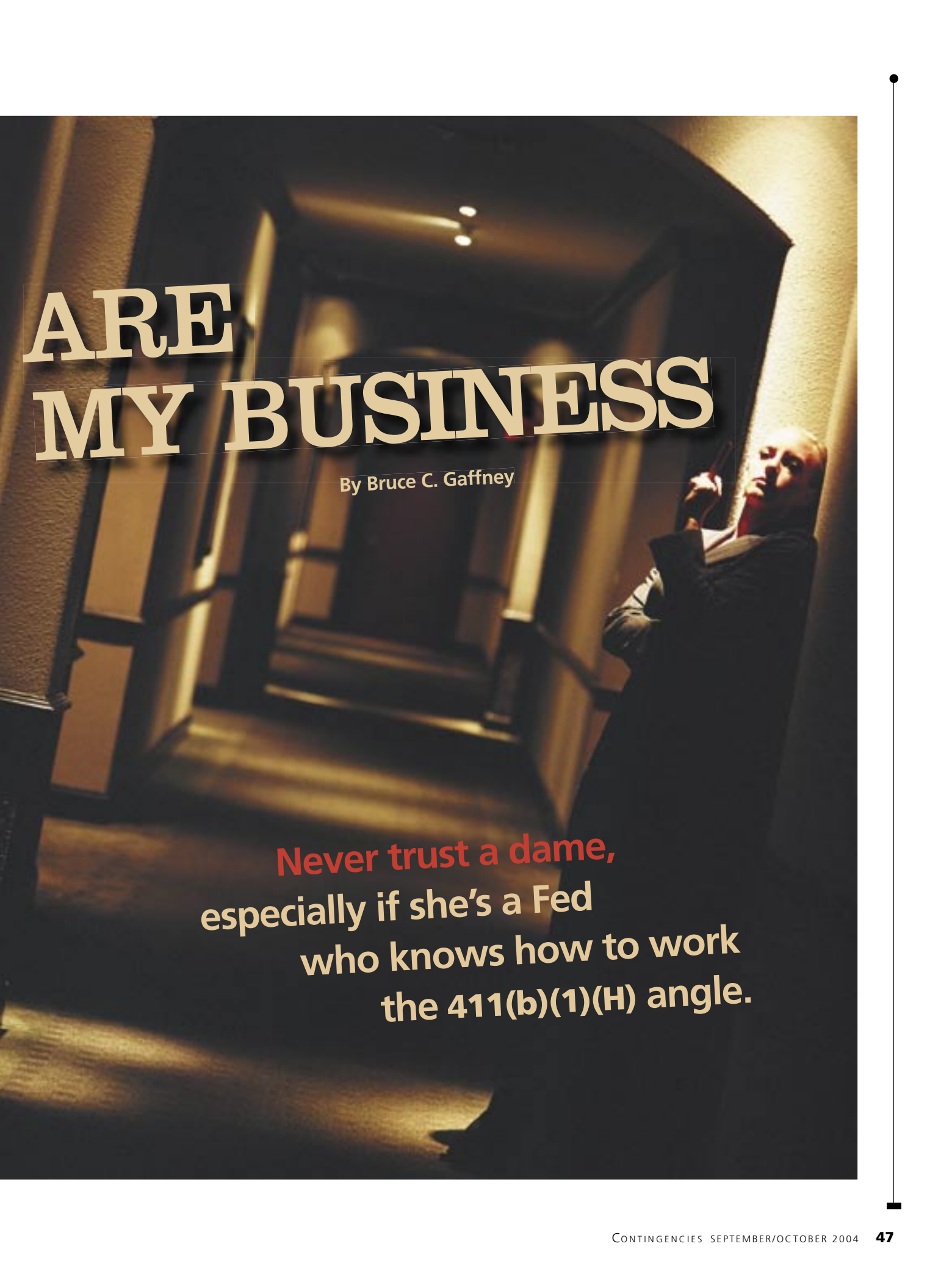
• PENSIONS

I DROVE OUT TO ONE OF THE TONY SUBURBS TO MEET MONEY.

I'd received a call from a stuffy lawyer I'd once done some work for, inviting me to meet with an even stuffier rich guy about a case. I parked in the half-circle driveway of a house that was bigger than my apartment building and rang the bell. Jeeves sniffed at me, then at my card, and clearly didn't like what he smelled. He let me in anyway. He took me through a bunch of rooms that looked as if they'd been stolen from a museum, and we ended up in a greenhouse filled with what I guessed were rare orchids.

But I'm no horticulturist. I'm a pension actuary—a solo EA, \$300 an hour, plus expenses. If times get tough—like they always do—I'll do some divorce work—calculate a present value, help with a QDRO—but I always comply with ASOP 34.

Lowell Cabot Lodge was old. He was up where the q's get to double digits. He was an executive with a big conglomerate, and I was wondering what he might want with a small-time gumshoe like me. He could afford the big boys, firms that were lousy with Society members. ➤



ARE MY BUSINESS

By Bruce C. Gaffney

Never trust a dame,
especially if she's a Fed
who knows how to work
the 411(b)(1)(H) angle.

He sat in a chair with a heavy blanket around him, even though it had to be at least 80 degrees in the joint. Servants buzzed about, but I only had eyes for one person in the room. She was a redhead who'd make a bishop kick a hole in a stained glass window. She was introduced as Stella Adams, and looked to be arm candy for the geezer, but I had a hunch she might be something more. She looked smart under all that makeup, and the old guy seemed to be glancing at her a lot. And not just at her legs.

Seems that old man Lodge was concerned about discrimination—age discrimination. He thinks his pension plan is discriminating on the basis of age, and he wants me to prove it.

Sure, I said, I'll look into it. He gave me the name of a slick national consulting firm—piles of actuaries, not to mention account managers and comp consultants—that he said did the val work for his company's pension. They'd give me the documents I needed. If they gave me trouble I was to call him immediately.

I headed back down the hill to check out the plan, and figured I'd check out the dame, too. Lodge had enough dough—he was maxing out the 401(a)(17) limits for sure, not to mention that he probably had an SERP, stock options, and deferred comp. Why was a guy like him worried about a little qualified DB benefit? And why did a guy like him hire an actuary like me?

I called a guy I knew at Treasury who owed me a favor. It was a while back, before they repealed 415(e), and he needed me to calculate a combined limit, and fast. I did it, some exec got a smaller benefit, and I had a marker from a G-man. He was a low-level hack who spent his day proofreading Revenue Procedures and wishing that government employees could collect Social Security along with their fat pensions. But he was a guy who paid attention, and knew what the score was. He said he'd talk to some people, and we hung up.

The office bottle and I spent some quality time together while I smoked and stared out the window at the pawnshop and the dumpster. Then I headed for the big-time actuarial consulting firm to see what was up.

Their offices were in a swank high-rise, as I expected. Everybody had a window with a view of the sky line, everybody had a full set of CCH binders. A smarmy FSA who reminded me of Jeeves met me in the lobby. He looked at me like I hadn't passed EA2, but he assured me they'd be as helpful as possible. They'd send the paperwork this afternoon. No surprises, except that he let something slip.

"The plan's cash balance. I mean, its hybrid nature means..."

He kept talking, but I quit listening. A cash balance plan. Things just got interesting.

There was a lot of talk on the street about cash balance plans, and not all of it good. I mostly dealt with traditional DB plans, so I didn't pay close attention to the cash balance stuff. But I was gonna start.

I reached into the glove compartment for my .38. An actuary doesn't always carry a piece, but it looked like I might have just stumbled onto something big.

As I expected, the big firm sent over a pile of documents as tall as an actuarial student. I called up my accountant, "Numbers" O'Malley. He was quick with figures, knew enough pension to be dangerous, and was more honest than most. He needed the work. He'd been with the Andersen boys 'til their game went south and now he had his shingle out. I dumped the pile of paper on him, grabbed an SPD to peruse, told him to call me when he found something, and went looking for a drink.

I found a quiet stool, nursed a bourbon, and read about service definitions, 415 compensation, and vesting rules. Lodge's plan was a cash balance plan—a defined benefit plan that looked like a defined contribution plan. Each participant had a hypothetical account balance, which grew with interest at a defined rate and with annual pay-related allocations. In this case, the pay-related allocations were age based and they *increased as a participant got older*. How could this discriminate against older workers? And Lodge was at the highest allocation rate. Something didn't fit.

I met my Treasury pal at a gin joint on the wrong side of the tracks. No danger of accidentally bumping into an IRS agent or a member of the Academy of Actuaries there.

My G-man was scared. He downed a quick shot and then had very little to say except to tell me: "Stay out of it!" He wouldn't say more; he just left a sheet of white paper face down on the bar. "We're even," he slurred as he rushed out.

I turned the paper over, and I'll admit I gasped. It was a printout of a bio for Stella Adams. She was a red-headed bombshell with an attitude and gams that wouldn't quit. No doubt about that. But she was also a Fed. Pretty high up with the Equal Employment Opportunity Commission. EEOC. This wasn't just something big; it was even bigger than that.

I hit the library to read the Internal Revenue Code, the *Wall Street Journal*, some Treasury regs, and Notice 96-8. In the end, I understood cash balance plans a lot better, but I was no closer to an answer.

Yeah, cash balance plans are different. But Lodge's pension put its pants on one leg at a time, like any other pension. The benefit was defined as the actuarial equivalent of the account balance. It took some scratching on the back of an envelope, but I grew certain it passed the accrual rules. It provided for a whip-saw calculation, and the interest credit was based on 30-year Treasuries. Sure, they're long gone, but the IRS gives us a rate every month like clockwork. It wasn't a conversion—there was no wearaway. What the heck was I missing? I stayed 'til the old bag at the circulation desk booted me.

I wished I'd cut my research short sooner. When I got to O'Malley's office, he was slumped over his desk with a half-empty whiskey bottle next to him. I shook him, and he leaned back, groaning. That's when I saw the blood. One of the slugs in O'Malley was lead, and he didn't have long for this world. I looked him in the face and said, "Who did it, kid?" But he was gone.

I sat for a while and thought about how fragile it all was. And then I wondered if O'Malley was iced because of something I didn't know about, or if it was because of this case.



I looked at her
some more,
then said:
“What about
a DC plan?”

That’s when she pulled her gun.

I tossed the office and found nothing that told me anything. It was curious that there were no notes about Lodge’s pension plan, but maybe O’Malley hadn’t started looking at it yet. All I could find was a small, crumpled scrap of paper in his wastebasket with a bit of writing on it. The only thing the scrap said was:

“411(b)(1)(H).”

O’Malley’s code book was from ’68—*pre-ERISA*—and did me no good. Fingers kept it all in his head. I wiped my prints off everything I remembered touching and then left. I whispered, “Sorry, kid,” as I locked his office door. I dropped a dime to tip the cops but didn’t give the dispatcher my name. I heard the sirens as I drove to my office to think this through.

At my office, I checked the code. You know what 411(b)(1)(H) says. Accruals under a DB plan can’t decrease due to attainment of any age. If I looked at the cash balance account as an equivalent annuity payable at normal retirement, a young person got a bigger benefit than an older person (all other things being equal). But that was the way a DC plan worked, and that was copasetic. It’s a DB plan that works like a DC plan. So which rules should apply?

I’d been chewing on that a while when Stella Adams walked in without knocking. The lights didn’t get any brighter when she came in; it just seemed that way. I had to remember that to get where she was, she must’ve climbed over a lot of dumb jamokes with stars in their eyes. If I wasn’t careful, I’d be one

more, just another funeral nobody went to.

I took the office bottle and a couple of glasses from a desk drawer and poured us each three fingers, while she acted scared and upset. She spent some time fussing with her things, then turned her pretty face toward me, bit her lip, and said in a breathy voice: “You must help me!”

I leaned back in my chair, grinned at her, and said quietly: “Knock it off, sister. I know you’re the heat. What I wanna know is, what do you want from me? Lodge is a shill. You’re the brains here. Why’s the EEOC interested in cash balance plans?”

She dropped the damsel-in-distress facade like a bad habit and lit a cigarette, then said, “We’re gonna prove that cash balance plans discriminate against older workers. We want you to help us. We hoped you’d figure it out yourself when you analyzed Lodge’s pension plan.”

“What’s in it for Lodge?” I asked.

She blew smoke out of her nostrils and smiled. “He’s an old guy; he doesn’t care about that pension. But he likes me.”

I just stared at her silently. She went on. “A cash balance allocation of a given percentage of pay at age 25 gets 40 years of interest. The same percentage allocation of the same pay to a 45-year-old gets 20 years of interest. It’s worth less if you’re older. I’d call that age discrimination.”

I looked at her some more, then said: “What about a DC plan?”

That’s when she pulled her gun.

I could’ve debated the point forever. How can a DC plan be nondiscriminatory and a DB plan that works exactly the same way discriminate? In fact, the IRS released regs not long ago that said mostly the same thing. But those regs were withdrawn, and you don’t argue with a gat. An EA with a small hole between the eyes is just as dead as one with a big hole.

When she said, “Let’s go,” I went quietly.

We were out on the street and I was trying to decide how to make a move for her gun when her cell phone rang. She answered, listened for a bit, never taking her eyes off me. Then she shut off the phone, put the gun in her purse, and said, “See ya at the EA Meeting,” and laughed. She didn’t answer when I asked what was going on. She just walked away into the dark rain.

The headlines the next day explained it. Seems she got to a judge. I read the case—it was supposed to be about a conversion, but the judge’s opinion went way beyond that. It looked like curtains for cash balance plans, maybe for all hybrid plans. Maybe for DB plans in general.

Whoever called her must’ve told her about the verdict and she didn’t need me anymore—dead or alive. I always hoped I’d see her again, but I never did.

So if you need an actuary, I’m available. Valuations, benefit calcs, plan design—I do it all.

Pensions are my business.

BRUCE C. GAFFNEY is a principal with Ropes & Gray, consulting actuaries in Boston.