



Technology Corner

By Joseph G. Hodges, Jr.

The Current Status of T&E Document Assembly in America

In the late fall of 2001, the landscape for the document assembly engine world for trust and estates lawyers significantly changed in terms of the usable document assembly software products that were and are now available. The outcome of all of this has fortunately turned out to be very positive for the users of these products in that many fine new programs have appeared on the market since January of 2002.

The purpose of this issue's column is to explore the current status of this document assembly marketplace and what it will be like in the not-too-distant future. We will also discuss how and why we have arrived at this fine state of affairs. In the process of this exploration, we will examine and discuss the following document assembly software products (listed below in alphabetical order):

- DL: Drafting Libraries—Attorney's Computer Network, Inc.
- Document Production System—Advanced Logic Systems
- Drafting Wills & Trust Agreements (DWTA)—West Group
- Essential Estate Planning Document System (EEPDS)—Panel Publishers
- FastDraft—InterActive Professional Software
- GhostFill—Korbitec
- Lawgic's California, Florida & Georgia Wills & Trusts—Lawgic Publishing Co.
- Lexis HotDocs State Forms Systems—Lexis-Nexis (Matthew Bender)
- PowerTXT—Intercon Associates, Inc.
- ProDoc Will Forms—Automated Legal Systems, Inc.
- ThinkDocs—DataTech Software
- TrustPlus and Will-Do-It—Cowles Legal Systems
- WealthCounsel—WealthCounsel Inc.
- Wealth Transfer Planning (WTP)—The Technology Group
- WinDraft—Eidelman Associates

Who Were the Key Players in January of 2001?

At the 35th Heckerling Institute, which was held in January of 2001, only five major document assembly software programs to automate the production of estate planning and probate documents were exhibited. Those products were:

- **Drafting Wills and Trust Agreements (DWTA)**, which currently is, and always has been, authored by former ABA LPM Section Chair, Bob Wilkins, and is available from West Group (www.westgroup.com).
- **Wealth Transfer Planning (WTP)**, which is now authored by New York City attorney, Jonathan Blattmachr, and is now available from the Law-On-The-Web Web site (www.lawontheweb.com).
- **California, Florida and Georgia Wills and Trusts Systems**, all of which were developed by Lawgic Publishing Co. (www.lawgic.com) of Novato, California. The California system is authored by two lawyers who are now at the California law firm of Davis and Whelan. The Florida and Georgia systems are authored by five lawyers at the Miami-based law firm of Holland and Knight.
- **WinDraft**, which was initially developed, and is still being maintained by LPM Section DAE guru Jim Eidelman (www.lawtech.com).
- **TrustPlus and Will-Do-It**, both of which were developed, and are still being maintained, by Cowles Legal Systems (www.cowleslegal.com).

In addition, a new system called **WealthCounsel**, which made its market debut in November of 2000 with a HotDocs-based Family Limited Partnerships module (www.wealthcounsel.com), was also being sold for the first time at the 2001 Institute.

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A few older systems of note also existed then (and most still do).

One is **FastDraft** (www.fastdraft.com). This product was initially developed by two Atlanta T&E attorneys to help them automate the production of both their own forms as well as a commercially available set of Georgia and Florida state-specific forms. All of these products were designed to function in a pick-and-choose clauses lawyer-operated fashion. In 2001, **Bank One** (www.bankone.com) chose to use this system to automate all its sample

forms. However, this particular product has since been (rather unfortunately in my opinion given the sophistication of the forms) removed from the marketplace because the law firm that was maintaining it for Bank One ceased to do so.

The second is the **ProDoc** systems (www.prodoc.com). Here again, we have a proprietary engine, although ProDoc also sells a "developer" version of its software, and their forms are state-specific, designed to work only in Texas, Florida and (soon) Illinois. Interestingly, ProDoc is one of the few software products that provides both estate planning and state-specific probate court documents for T&E practitioners.

The third is the **Automated Document Production** (ADP) document assembly system out of Iowa. However, again we have a product that uses a closed proprietary engine system. One major advertised advantage of the ADP system is that it can be used to produce both estate planning and probate court documents for all 50 states (excluding Louisiana). However, the program provides a truly complete set of forms only for Iowa (its home base) and a few other states, most of which are midwestern.

A few other systems that are worth mentioning here were readily available at this time too. These included the **DL: Drafting Libraries**, **PowerTXT** and **ThinkDocs**.

What Happened in November of 2001 to Significantly Change All of This?

Sometime in the fall of 2001, bad financial times began to befall both the WTP system and the entire line of Lawgic assembly systems.

In the case of WTP, it was due in large part to the alleged mismanagement of the financial and busi-

ness side of The Technology Group, which is the developer and owner of the WTP system and its Smart Words-based assembly engine. As a consequence, the following information was exchanged on the ABA-PTL discussion list on November 1, 2001. A message noted that WTP was currently in Chapter 11 but trying to reorganize. Another message noted that

"exciting things are in the works for LawOnTheWeb, WTP and Distribuguide."

Then, on January 18, 2002, Lawgic posted a message to all its users saying that they had been affected by the economic downturn and would not

be releasing a year-end update. They also noted that they were in the midst of negotiations to find a potential acquirer. Lawgic noted that they had moved to an e-mail-based technical support system through which subscribers could contact the company at support@lawgic.com.

In each case, the possibility of these two companies having to file for protection and/or reorganization under the U.S. bankruptcy laws soon became very realistic. At the same time, representatives of both companies approached many of the major law book publishers about the possibilities of their taking over ownership and control of the companies and their document assembly software products. Unfortunately, for reasons that are currently unknown to this author, none of these publishers expressed much of an interest in taking over ownership or control of either of the products or the companies that were developing and supporting them.

Thus, and as we headed into the opening of the 36th Heckerling Institute in early January of 2002, it became evident that the only T&E document assembly vendors who would be there would be West Group, as the current marketer of the **DWTA** system, **WinDraft** (for the second year) and **WealthCounsel** (also for the second year, but this time with six additional HotDocs-based practice system). One of the major drawbacks to the WTP, Lawgic and DWTA systems is that, although each of them is customizable by the user, at least to a certain extent, they each use a proprietary document assembly engine. As a matter of fact, at least in the case of Lawgic, they do not make the developer version of their software available to the general public to purchase or use. In the case of DWTA, the program uses the DOS-based CAPS software, which is highly complex and thus,

As you can see, there are still plenty of workable options available to help us all improve our document production and data gathering methods.

difficult to learn and use, and is not going to be moved into Windows or further developed. In the case of WTP, they use a proprietary word processor called **Smart Words** as their assembly engine, which requires the user to learn yet one more word processing software program. These features present serious roadblocks for any law firm that wants to use their own document language in the documents that are going to be assembled by one of these programs.

On the other hand, document assembly products that have been designed to assemble documents using either the **HotDocs** or the **FastDraft** engines are usually not all that complex to use to develop templates for customized user documents. That goes a long way toward explaining why HotDocs is so popular and is considered to be a user-friendly document assembly software system today.

But Wait—Two New Players Have Recently Arrived on the Scene

While I was attending the 2002 ABA TechShow in Chicago in March of 2002 (www.techshow.com), I discovered a new document assembly system that rivals HotDocs in its functionality and ease of use. It is called **GhostFill** (www.ghostfill.com).

GhostFill is a flagship product of Korbitec. Korbitec is a software development company with more than 20 years' experience in the field of document assembly that employs some 160 people, of which over 50 are full-time developers working at the company's head office in Cape Town, South Africa. It is a privately held company whose senior executives are the principal shareholders. Most of the firm's partners have been together since its beginning, in the 1970s. Its older, more established projects are run as highly successful, independent business units; and a number of newer projects, still in the research and development phase, will be funded by a recently raised private rights issue of \$10 million.

As a flagship product of Korbitec, GhostFill has been sold in South Africa since 1998. With several thousand users, it is by far the most successful document assembly product in that country. As GhostFill has developed over the past few years, Korbitec has implemented numerous large-scale solutions both for law firms and for general corporate institutions. These include a number of the largest banks and insurance companies in South Africa. Now, as a more mature product, GhostFill is also being sold, implemented and supported in North America through the company's Toronto office under the able direction of

Doug Simpson, a well-known and highly respected professional in the North American document assembly community. You can get the full story at www.korbitec.com.

According to the Web site, GhostFill covers every aspect of document assembly from the manipulation of numbers, currencies and dates, to the all important document logic functionality that allows template designers to include or exclude blocks of text based on variable information. In all, nearly 200 tasks in 15 different categories are shipped with the product.

The GhostFill **FillPoint Editor's COM-based architecture** allows developers to create their own custom tasks and include these in the GhostFill environment with the minimum of fuss. The FillPoint Editor is used to create, edit, view and test FillPoints and is structured to give maximum assistance to template designers. Its full drag-and-drop functionality allows the template designer to construct single, compound or nested FillPoints based on any combination of: built-in automation tasks, variables specific to the template under construction, and "data" already saved in the GhostFill system such as dialogs, clauses, lists, sub-templates and profiles. The constructed FillPoints can then be dropped into multiple formats; Word, RTF (for all us loyal WordPerfect users), HTML, as well as saved lists and clauses if applicable. It also allows the template designer to test the constructed FillPoint on-the-fly from within the editor.

The GhostFill Clause Explorer can be used to draft, store and maintain clauses ranging from a single word or sentence, to one or more paragraphs, to a multi-page sub-document. The clauses can themselves contain GhostFill fillpoints and tasks, and unlimited nested sub-clauses. When you create a clause for the first time, you can either drag and drop existing formatted text and graphics in to the Clause Explorer editor from MSWord or use the editor to draft a clause from scratch without even having to load your word processor. The Clause Explorer's intuitive interface then allows you to browse through your hierarchical library of saved clauses, with a preview pane detailing the content of each, and you can add and store comments as and when clauses are edited.

When you are in *template design mode*, you can simply drag a clause into your template to automatically create the required fillpoint, which will be executed at run-time. Or, if you are in *document drafting mode*, you can drag a clause from the Explorer and position it anywhere in your document. GhostFill also allows you to insert the same clause in multiple-formats: Word, RTF and HTML.

With GhostFill's **List Explorer** you can create lists from which users select answers when filling in templates. Not only does this make entering data easier and faster, it also ensures accuracy and consistency of the resultant text. The List Explorer uses an intuitive tree structure for storing, and a user-friendly interface for the creation and editing of lists. Template developers can make a distinction between "Items" and "Results." A result linked to an item can then simply be the item itself, or it could be a more detailed string of text, including additional fillpoints with variables. Also, when it comes to constructing the required fillpoint, which will access the list, GhostFill's **List Wizard** will take the template designer through the numerous options available.

GhostFill automatically supports **MSWord, RTF, HTML and TXT** formatted templates. One advantage of designing your templates in any of the latter three formats, is that assembly can take place without the overhead of having to load a word processor, resulting in much faster assembly times. With RTF templates, 99 percent of Word's sophisticated formatting options (including headers, footers, font styles, paragraph numbering, tables, etc.) are retained. An IE5 client is provided for the viewing and assembly of HTML-formatted templates which may contain all the sophisticated graphics and hyperlinks that HTML offers.

PDF forms that are designed and created in Adobe Acrobat have an associated data file (.FDF) attached to them. This FDF file can be reviewed and edited in GhostFill via the custom built **FDF Editor**, to incorporate any and all GhostFill scripting. It then becomes an **FDF Template** ready for use in document assembly by end users. At run time, the user highlights the required FDF template in the GhostFill Explorer which triggers the standard **GhostFill Filler** filling processes (dialogs, database extraction, etc.). The **GhostFill Explorer** presents the user with a list of filled FDF files in the same way as it does for any other filled documents. On highlighting and clicking a required FDF file, Adobe Acrobat is fired up and the filled PDF form is displayed in the reader.

The advantages of GhostFill's PDF graphical forms assembly solution can be summarized as follows:

- It provides the ability to create user-friendly yet sophisticated dialogs for the data capture process. This would typically be far preferable to the alternative "point and click" method that is normally required with a PDF form.
- This data input by the user can be stored in GhostFill "answer-files," and recalled at any stage.

- The data input by the user, can also be used to assemble multiple-document formats, not just PDF, but also Word, RTF, TXT and HTML.
- The data required for the PDF form need not only come from user input, but can also be sourced from external data-sources via GhostFill's native ODBC data-link, or via a COM connection. Also, things like standard pick lists, and even stored clauses, can be selected during the data capture process.
- The assembled FDF file is stored in GhostFill's document management system, and can be rendered and re-rendered from there as many times as needed, and at any stage. Only the FDF file, which has a very small foot-print, is stored after each run, and only one version of the full PDF file needs to be kept. The location of the assembled FDF file can be managed and programmed (e.g., automatically going to a specific directory based on some user profile information).

We have all used the old trick of making some changes to an existing document and then saving it under a new filename. Unfortunately, what often happens is that inappropriate text from the original document finds its way into the new document. GhostFill has found a way for you to safely use your existing documents in this way, as the GhostFill **Markup Wizard** enables you to use Microsoft Word's highlighter function to instantly turn your favorite documents into powerful templates. Simply select the document that you want the template to be based on and highlight the parts of the document that change each time. GhostFill then instantly creates a template inserting FillPoints where the variable data was, and without changing the layout and content of the remaining text. The GhostFill **Paragraph Wizard** enables you to highlight a block of existing text that might need to be included, excluded or repeated based on variable information, and it then automatically creates the necessary document logic fillpoints around the highlighted paragraph.

No sooner did I return to my office from the 2002 ABA TechShow than I discovered yet another new document assembly system that runs in HotDocs. It is called **Essential Estate Planning Document System** or EEPDS. It is a product of Panel Publishers (www.panelpublisher.com), which is a division of Aspen Publishers, Inc. It is authored by Thomas D. Begley, Jr. Esq. of the Moorestown, New Jersey law firm of Begley & Begley, P.C., with contributions

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right did not exist. The donee in that circumstance has the ability to realize immediate value through withdrawal much like a beneficiary of a trust with a *Crummey* withdrawal provision, and the annual exclusion should be allowed.

As to transfer restrictions, a provision allowing a family member the unrestricted right of transfer of an interest in the entity to an outsider might not be palatable to most clients. The desire to keep the assets in the family is one of the primary reasons many closely held entities are created. Rather than completely restricting the transfer, however, the entity or other family owners could be given a right of first refusal so that if a family member desires to transfer the interests for cash, the holder could exercise the right to purchase that interest before it is transferred to the outsider, keeping the interest in the family.

As to the lack of distributions, the court's requirement that the portion of income flowing to the interest holder be "ascertainable" poses difficult problems. Clearly, a required annual distribution of a specified amount should meet this requirement. However, many clients may be reluctant to do so, preferring, as Mr. Hackl did, to allow the assets of the entity to grow in value.

ENDNOTES

¹ *C.M. Hackl*, 118 TC No. 14, Dec. 54,686 (2002).

² The rights are similar to those possessed by an assignee of a partnership interest.

³ Reg. §25.2503-3(b).

⁴ *Supra* note 1.

⁵ *Id.*

⁶ *Id.*, citing *L.J. Calder*, 85 TC 713, Dec. 42,467 (1985).

⁷ See, e.g., *E.F. Fondren*, SCt, 45-1 USTC ¶10,164, 324 US 18, 65 SCt 499; *L.J. Stinson Est.*, CA-7, 2000-1 USTC ¶60,377, 214 F3d 846.

⁸ *Supra* note 1.

⁹ But fair market value is determined at the

date of the gift based on "the price at which such property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts." Reg. §25.2512-1.

¹⁰ *McCord*, U.S. Tax Court No. 7048-00 (decision pending)

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from estate planning attorneys in 18 other states. Tom concentrates his practice on Elder Law and Estate Planning. He is a past Chair of the New Jersey Bar's Real Property, Probate and Trust Law Section and the author of several books on Elder Law issues.

According to their brochure:

EEPDS is a unique system designed to help you increase your bottom line, manage your practice more effectively, eliminate the potential for costly errors, and save on billing and calendaring time with links to popular practice management software programs such as Time Matters, PC Law and Juris. The EEPDS system comes with more than 30 essential estate planning documents and countless options that cover virtually all client situations. It follows a step-by-step data entry and assembly process that allows data to be entered only once and helps determine that all the documents you draft will meet your individual client's needs. It is designed for use in every state with specific clauses and citations for 18 states and built-in customizable clauses for all other states.

The documents that come with this system include wills and trusts, powers of attorney, living wills, ancillary documents (such

as engagement and disengagement and beneficiary change letters) and several state-specific forms. The CD-ROM also contains a complete User Guide, works with both Word (Version 6.0 and up) and WordPerfect (Version 5.2 and up), and requires the use of a LaserJet printer as opposed to an Inkjet Printer.

Where Are We Going from Here?

As you can see, there are still plenty of workable options available to help us all improve our document production and data gathering methods. What is exciting is that, finally, there are some systems that work with the ever popular HotDocs and its newest similar functioning competitor, GhostFill.

And what about the ultimate survival of Lawgic and WTP? Well, the ABA RPPT Section just held its spring CLE and Council meeting in San Francisco, and the authors of both systems were there. As for WTP, co-author Michael Graham reports that the authors are currently in the process of moving the entire WTP software program into either the HotDocs or the GhostFill document assembly platform. As for Lawgic, co-author Ed Koren reports that negotiations to acquire all the rights to this software and at least the wills and trusts systems that run in it are continuing. My recommendation to them is that they might consider moving their software programs to either HotDocs or Ghostfill because that appears to be where the future of T&E document assembly software is headed.

This Issue's Featured Web Sites:

- www.abanet.org/rppt/public/home.html—ABA RPPT Section Public Information

& Frequently Asked Questions on Estate Planning & Administration

- **www.findarticles.com**—Search for substantive articles in areas outside the law in over 300 publications dating from 1998 to the present
- **www.myciti.com**—A portal for the free storage of important client papers and information
- **www.dslreports.com**—Find out if DSL is supported at your home or business location

Editor's Choice

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In the typical situation, husband and wife have wealth transfer plans that provide for a marital trust and credit shelter trust upon the death of the first spouse, and assets are not divided during lifetime. This approach can lead to an anomaly if potentially discountable assets such as limited partnership interests or closely held stock are involved. As pointed out in LTR 9403005,²⁹ a different value can be obtained for estate tax purposes and funding purposes. In that ruling, division at death did not impact the estate tax value. The closely held stock was valued as a controlling interest. Yet, the division of the closely held stock at death to fund the marital trust did affect the value for funding purposes. The value going into the marital trust was discounted.

A better result may be to split the discountable assets during lifetime, and plan for maximizing the valuation discount at the second death. This can be ac-

complished by having the first spouse to die place his or her fractional interest in a QTIP trust. Based upon a line of cases, there would be no aggregation of the QTIP trust assets with the assets owned outright by the surviving spouse for transfer tax valuation purposes.³⁰ Instead, discounts for both minority interests should be available.

Dividing assets should also be considered if devices like a GRAT or qualified personal residence trust (QPRT) are part of the wealth transfer plan. Any gift to the GRAT or the QPRT would be reduced due to the minority or fractional interest discount.

Conclusion

Unless EGTRRA is altered or repealed, the estate and generation-skipping transfer taxes will be factors in wealth transfer planning for many individuals through 2009. Likewise, it is important to remind ourselves that repeal is in actuality a one-year suspension unless Congress acts. Also, there is increasing speculation that repeal will never take place. This speculation is being fueled by the fact that we are presently facing federal budget deficits, and there will be two presidential elections and four congressional elections between now and 2010.

All of this makes charting a wealth transfer course a real challenge. As this article points out, there are some critical planning concepts to consider in meeting this challenge. These concepts include: flexibility,

proper allocation and maximum use of the applicable exclusion amount and lifetime transfers with retained interests or control while minimizing or eliminating transfer taxes.

ENDNOTES

- ¹ *A. Strangi*, 115 TC 478, Dec. 54,135 (2000); *H.D. Knight*, 115 TC 506, Dec. 54,136 (2000).
- ² Reg. §1.351-1(c)(1)(i) and (ii).
- ³ Reg. §1.351-1(c)(5).
- ⁴ Rev. Rul. 93-12, 1993-1 CB 202.
- ⁵ Act Sec. 703 of Revised Uniform Limited Partnership Act.
- ⁶ Rev. Rul. 77-137, 1977-1 CB 178.
- ⁷ Code Sec. 2701(c)(3)(A).
- ⁸ Code Sec. 2701(d)(2)(C).
- ⁹ Reg. §25.2701-4(c).
- ¹⁰ Code Sec. 2702(a)(2)(A).
- ¹¹ *A.J. Walton*, 115 TC 589, Dec. 54,165 (2000).
- ¹² *W.A. Cook*, 115 TC 15, Dec. 53,960 (2000); *P.A. Schott*, 81 TCM 1600, Dec. 54,331(M), TC Memo. 2001-110; *W.A. Cook*, CA-7, 2001-2 USTC ¶60,422, 269 F3d 854.
- ¹³ Code Sec. 2704(c)(2).
- ¹⁴ *A.M. O'Reilly*, CA-8, 92-2 USTC ¶60,111, 973 F2d 1403.
- ¹⁵ Reg. §§20.7520-3(b)(2)(ii) and 25.7520-3(b)(2)(ii), Example 2.
- ¹⁶ LTR 9112007 (Dec. 20, 1990).
- ¹⁷ Code Sec. 675(4)(C).
- ¹⁸ Rev. Rul. 85-13, 1985-1 CB 184.
- ¹⁹ FSA 200036012 (May 25, 2000) and TAM 200210009 (Nov. 19, 2001).
- ²⁰ Code Sec. 2642(f)(1).
- ²¹ Code Sec. 2701(a)(4)(A).
- ²² LTR 9113009 (Dec. 21, 1990).
- ²³ Code Sec. 6501(c)(9).
- ²⁴ *B. Madorin*, 84 TC 667, Dec. 42,023 (1985); TAM 200010010 (Nov. 23, 1999) and TAM 200010011 (Nov. 23, 1999).
- ²⁵ Code Sec. 664(d)(3)(A).
- ²⁶ Code Sec. 664(d)(3)(B).
- ²⁷ LTR 200101021 (Jan. 8, 2001).
- ²⁸ Reg. §25.2523(f)-1(f), Example 11.
- ²⁹ LTR 9403005 (Oct. 14, 1993).
- ³⁰ *L.F. Bonner Est.*, CA-5, 96-2 USTC ¶60,237, 84 F3d 196; *H.R. Mellinger Est.*, 112 TC 26, Dec. 53,218 (1999), acq., 1999-2 CB xvi; *A.B. Lopes Est.*, 78 TCM 46, Dec. 53,448(M), TC Memo. 1999-225; *E.S. Nowell Est.*, 77 TCM 1239, Dec. 53,219(M), TC Memo. 1999-15.