IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re: Whitehall Trust, *Debtor*.	§	Chapter 11 Case No. 25-15241 (PMM)
In re: Saucon Trust, *Debtor*.	§	Chapter 11 Case No. 25-15243 (PMM)

ORDER

AND NOW, upon consideration of the above-captioned Debtors' ("the Trusts") Motion for Certification of Direct Appeal, to the United States Court of Appeals for the Third Circuit, of this Court's Order Dismissing the Trusts' Bankruptcy Cases [Case No. 25-15241, doc. #270] ("the Motion"), and Secured Creditor Lehigh Valley 1, LLC's ("Lehigh") Objection thereto [Case No. 25-15241, doc. #283] ("the Response"), it is hereby **ORDERED** that:

1. The Motion is **GRANTED**.*

Patricia M. Mayer

Date: April 20, 2026

Hon. Patricia M. Mayer,
United States Bankruptcy Judge

* * *

On March 19, 2026, this Court granted Lehigh's Motion to Dismiss the Trusts. [Case No. 25-15241, doc. #264] ("the Dismissal Order"). An accompanying Opinion was docketed, wherein the Court defined the term "business trust" under 11 U.S.C. §101(9)(a)(v) and determined that the Trusts failed to qualify as such. [Case No. 25-15241, doc. #263] ("the Opinion"). Only business trusts are eligible for Chapter 11 bankruptcy relief.

Subsequent Orders were entered granting: (1) a limited, emergency stay of the Dismissal Order in advance of an expedited evidentiary hearing [Case No. 25-15245, doc. #51], which the Court held open for the Trusts while they weighed their options; and (2) a stay of the Dismissal Order pending appeals therefrom [Case No. 25-15245, doc. #'s 67, 68]. The Trusts filed timely Notices of Appeal on March 31, 2026 [e.g., Case No. 25-15241, doc. #269]. Now, the Trusts move for direct certification of their appeals to the Third Circuit. Lehigh filed a timely Response in opposition. Fed. R. Bankr. P. 8006(f)(3)(A). This Court currently retains exclusive jurisdiction over the Motion. See id. 8006(b), (d); Collier on Bankruptcy ¶ 8006.02 (16th 2026).

* * *

The Trusts' appeals must be certified if the Court concludes that:

(1) The Order involves a question of law as to which there is no *controlling decision*;
(2) The Order involves a question of law requiring resolution of *conflicting decisions*;
(3) An immediate appeal from the Order may materially *advance* the progress of *the Trusts' bankruptcy cases*; or
(4) The Order involves a matter of *public importance*.[1]

[1] For ease of reference, these will be referred to as "the Certification Factors."

28 U.S.C. §158(d)(2)(A)–(B); In re Maxus Energy Corp., 627 B.R. 259, 265 (Bankr. D. Del. 2021) ("While [§158(d)(2)(A)] contains three subparts, there are four disjunctive criteria as subpart (i) sets forth two separate benchmarks for certification."); In re Millennium Lab Holdings II, LLC, 543 B.R. 703, 708 (Bankr. D. Del. 2016) (same); In re: Trib. Media Co., 2016 WL 1451161, at *2 (D. Del. Apr. 12, 2016) ("In accordance with section 158(d)(2)(A) and (B), certification is mandatory if the court determines that any of the [circumstances enumerated in §158(d)(2)(A)] exist[.]"); In re Trib. Co., 477 B.R. 465, 470 (Bankr. D. Del. 2012) (similar).

* * *

The Trusts contend that the first two Certification Factors are met because: (1) "[n]either the Supreme Court nor the Third Circuit has squarely addressed what constitutes a 'business trust' under the Code[,]" Motion at 4 (quoting Opinion at 11); and (2) "divergent business trust standards are legion." Mot. at 5 (quoting Op. at 9). Lehigh does not dispute that there is a lack of controlling precedent here. See generally Resp. See also [Case No. 25-15241, doc. #120, ¶ 49] ("The Third Circuit has not directly addressed what constitutes a 'business trust' under section 101(9)(A)(v)."). Rather, Lehigh seems to argue that the first two Certification Factors are unmet because: (1) this Court's test is similar to one recently laid down by the Third Circuit in another context; (2) most business trust standards are substantively concordant; (3) the Trusts will raise both questions of law and fact on appeal; and (4) the Court's factual findings suggest that the Trusts would fail any test. None of these counterarguments is entirely persuasive.

Given the technical nature of the term "business trust," the Court in the Opinion conducted a survey of others construing it. Many were grounded in §101(9)(a)(v). The rest, apart from the "GBForefront" line, were grounded in the Internal Revenue Code. See Little Four Oil & Gas Co.

v. Lewellyn, 35 F.2d 149 (3d Cir. 1929) (construing the term "business trust" in the context of the Internal Revenue Code); Morrissey v. Comm'r of Internal Revenue, 296 U.S. 344, 359 (1935) (same); GBForefront, L.P. v Forefront Mgmt. Grp., LLC, 888 F.3d 29, 40 (3d Cir. 2018) (construing the term "business trust" in the context of diversity jurisdiction citizenship).

From these constructions the Court distilled a derivative of the Morrissey test. Courts in five circuits—including this one—have either adopted the Morrissey test or employed a similar formulation when construing the term "business trust" under §101(9)(a)(v). E.g., In re Tiel Tr. I FBO Paula T. Douglass, 656 B.R. 810, 838 (Bankr. D. Colo. 2024); Vera T. Welte Testamentary Tr., 2024 WL 2819677, at *2–3 (Bankr. N.D. Iowa June 3, 2024); In re Two Rivers Irrevocable Tr., 653 B.R. 284, 289 (Bankr. M.D. Ga. 2023); In re Dille Fam. Tr., 598 B.R. 179, 194, 200–01 (Bankr. W.D. Pa. 2019); In re Eagle Tr., 1998 WL 635845, at *5 (E.D. Pa. Sept. 16, 1998); In re Sung Soo Rim Irrevocable Intervivos Tr., 177 B.R. 673, 677 (Bankr. C.D. Cal. 1995); In re Mosby, 61 B.R. 636, 638 (E.D. Mo. 1985), aff'd, 791 F.2d 628 (8th Cir. 1986).

Lehigh is correct that this Court's formulation is generally in line with GBForefront; the same is true of Lewellyn and Morrissey.[2] This is no accident. Still, the Court stands by its determination that none of the tests surveyed in the Opinion were controlling. See Millennium Lab, 543 B.R. at 711 ("Controlling law for the purposes of section 158(d)(2)(A)(i) is that which 'admits of no ambiguity in resolving the issue.'" (quoting In re Conex Holdings, LLC, 534 B.R.

[2] In Lewellyn, business trusts were likened to "plain unincorporated *joint-stock* association[s]," that do more than "merely collect . . . rentals" for distribution to shareholders. Lewellyn, 35 F.2d at 150 (emphasis added). Furthermore, the "North Hills Village" factors include: (1) formation "by a group of investors who contribute capital to the enterprise with the expectation of receiving a return on their investment[;]" (2) "continuity of the business enterprise uninterrupted by death among the beneficial owners[;]" and (3) the free transferability of interests. N. Hills Vill. LLC v. LNR Partners, LLC, 479 F. Supp. 3d 189, 197–98 (W.D. Pa. 2020). These indicia—which were borrowed from Dille Family Trust (one of the Morrissey Legion)—round out this Court's test and serve as "granular indicators that animate the holding in GBForefront[.]" Id. at 197.

606, 611 (D. Del. 2015))). And Lehigh does not cite any law for the proposition that an order's general alignment with non-binding authority—however persuasive it may be—short circuits the first Certification Factor. This contradicts Lehigh's first counterargument.

Surely, the Trusts intend to advance a meaningfully different test on appeal. See Statement of Issues on Appeal ¶ 1 [Case No. 25-15241, doc. #282] ("Statement"). It is unclear what that would look like.[3] One potential candidate could be the Sixth Circuit's "Knight Trust" standard. See In re Kenneth Allen Knight Tr., 303 F.3d 671, 680 (6th Cir. 2002)). On one hand, this standard mirrors the others because it hinges on whether the candidate trust was "created with the primary purpose of transacting business or carrying on commercial activity for the benefit of investors[,]" instead of preserving the trust res for beneficiaries. Id. Indeed, this statement was essentially mapped onto the fourth and fifth factors of the Court's test; these factors often appear in Morrissey-adjacent opinions.[4] See Op. at 18; Eagle Tr., 1998 WL 635845, at *5. Moreover, the Knight Trust panel seemed to approve of the Secured Equipment Trust and Eagle Trust decisions, see Knight Tr., 303 F.3d at 680, to which this Court analogized in the purposive section of the Opinion. Knight Trust also underscores the fact-specific nature of business trust inquiries. Id. So do most, if not all, of the cases. See Op. at 15–16. This supports Lehigh's second counterargument.

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[3] In their Response to Lehigh's Motion to Dismiss them, the Trusts amplified the lodestar Morrissey factor. Compare Resp. to Mot. to Dismiss ¶ 69 [Case No. 25-15241, doc. #190] ("The most important factor for determining whether a trust is eligible to file for bankruptcy protection as a business trust under Section 101(9) is whether the trust was *created and maintained* for a business purpose." (citation modified) (emphasis added) (quoting Tiel Tr., 656 B.R. at 844)) with Op. at 18 ("Among the most important attributes of a business trust are . . . creation *and* maintenance for the purpose of conducting business." (emphasis in original)).

[4] In Knight Trust, the Sixth Circuit clarified that its test did not necessitate a profit-motive inquiry. See Knight Tr., 303 F.3d at 677 (distancing from In re Treasure Island Land Trust, 2 B.R. 332, 334 (Bankr. M.D. Fla. 1980)). The Second Circuit made a similar clarification before engaging in precisely such an inquiry. See In re Secured Equip. Tr. of E. Air Lines, Inc., 38 F.3d 86, 90 (2d Cir. 1994)). The Court fails to see how application of an investor-driven standard, or any other, could ever be fully divorced from a profit-motive analysis. See Investor, Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/investor (last visited Apr. 18, 2026) (defining an "investor" as "one that seeks to commit funds for long-term *profit* with a minimum of risk[.]" (emphasis added))

But on the other hand, the Knight Trust panel broke with those courts that had applied Morrissey in the context of §101(9)(a)(v)—including, now, no fewer than three in this Circuit, see Op. at 18; Dilly Family Trust, 598 B.R. at 194, 200–01; Eagle Trust, 1998 WL 635845, at *5—at least insofar as Morrissey requires evidence of transferable ownership certificates. Knight Tr., 303 F.3d at 679. Yet it has been said that "inter-circuit splits do not satisfy section 158(d)(2)." Millennium Lab, 543 B.R. at 714 (Silverstein, J.) (citing WestLB AG v. Kelley, 514 B.R. 287, 294 (D. Minn. 2014) and In re Gen. Motors Corp., 409 B.R. 24, 29 (Bankr. S.D.N.Y. 2009)). Accord Re: Del Monte Foods Corp. II Inc., 2026 WL 908049, at *5 (Bankr. D.N.J. Apr. 2, 2026). Assuming this is the rule, there is still no avoiding the "EHT" test, which focuses myopically on state law. See In re EHT US1, Inc., 630 B.R. 410, 425 (Bankr. D. Del. 2021). Because this Court respectfully disagreed with EHT, the latter is now in direct, material conflict with at least three reported opinions in this Circuit. See Op. at 18; Dille Fam. Tr., 598 B.R. at 194, 200–01; In re Blanche Zwerdling Revocable Living Tr., 531 B.R. 537, 545 (Bankr. D.N.J. 2015). Accordingly, if the Trusts' appeals were confined solely to the issue of whether this Court *misarticulated* the test it applied, then there would be little doubt that certification is warranted on the ground that the First and Second Certification Factors are satisfied regarding that issue.

However, the Trusts also intend to argue on appeal that the Court *misapplied* the test it articulated. For example, the Trusts believe that the Court erred in determining that they were not conducting business as of the Petition Date. See Statement ¶ 4. Apparently, the Trusts will argue that this constitutes reversible error because "a receiver had been appointed by the District Court prior to December 26, 2025 (the 'Petition Date') to collect rent and pay obligations and otherwise conduct the affairs of the Trust Debtors[.]" Id. See also Mot. at 7 (similar). Herein lies Lehigh's third counterargument, which appears to be that the first two Certification Factors are not prophylactic when appeals sound in questions of law *and* fact. The Court is mildly sympathetic to this argument and the supporting notion that "Congress believed direct appeal would be most appropriate where [the courts of appeals] are called upon to resolve a question of law not heavily dependent on the particular facts of a case[.]" Weber v. United States, 484 F.3d 154, 158 (2d Cir. 2007). See also id. at 160 ("Courts of appeals benefit immensely from reviewing the efforts of the district court to resolve [unsettled areas of bankruptcy law]. Permitting direct appeal too readily might impede the development of a coherent body of bankruptcy caselaw.").

If it was possible to excise the factual issues on which the Opinion turned and certify only the pure question of law that the Trusts apparently aim to raise on appeal, then the Court would be willing to do so. Similar efforts have been made. E.g., Maxus Energy Corp., 627 B.R. at 266–73 (certifying only two of six issues identified for appeal). But such an effort would almost certainly be futile because *all* the issues identified[5] by the Trusts will likely be swept in on appeal—even those of the inherently fact-specific variety. In re Maxus Energy Corp., 49 F.4th 223, 228 (3d Cir. 2022) ("[I]t does not matter which issues the Bankruptcy Court certifie[s] . . . because 'appellate jurisdiction applies to the order certified.'" (citations omitted)); In re Yellow Corp., 152 F.4th 491, 505 (3d Cir. 2025) ("[W]e exercise jurisdiction over the entire Bankruptcy Court order, not just those novel issues favoring certification." (citing 28 U.S.C. §158(d)(2)).

[5] The Motion does not specifically identify all the issues the Trusts intend to raise on appeal. Rather, the Court has deduced these from the Statement. This is one example of why the Motion may be technically non-compliant with Bankruptcy Rule 8006. See Fed. R. Bankr. P. 8006(f)(2)(B). Accord In re Otero Cnty. Hosp. Ass'n, Inc., 584 B.R. 783, 791 (Bankr. D.N.M. 2018). See also Fed. R. Bankr. P. 8006(f)(2)(E).

Arguably, even the first issue the Trusts intend to raise on appeal is fact bound. That is, the Trusts query whether this Court "properly define[d] the undefined term 'business trust' in the Bankruptcy Code *when it concluded that the Trust Debtors were not eligible* to seek Chapter 11 relief[.]" Statement ¶ 1 (emphasis added). However, the Court believes that the Trusts do intend to raise the standalone question of law on appeal as to whether the Court applied the wrong test. See Mot. at 4 ("[T]he Trust Debtors[] appeal . . . the Dismissal Order as to the proper standard to determine whether an entity is a 'business trust' under the Bankruptcy Code[.]").

This stands to reason. After all, "section 158(d)(2)(A) requires the lower court to certify a 'judgment, order, or decree,' not a specific issue, for appeal." Maxus Energy Corp., 49 F.4th at 228 (noting that "all of the requirements of section 158(d)(2)(A) [were] met" even though the bankruptcy court determined that four of the issues appellants identified were fact-dependent). Indeed, when read together, §158(d)(2)(A) and (B) plainly require bankruptcy courts to certify an order when it "*involves* a question of law as to which there is no controlling decision[.]" 11 U.S.C. §158(d)(2)(A)(i) (emphasis added). The same holds when an order "*involves* a question of law requiring resolution of conflicting decisions[.]" Id. §158(d)(2)(A)(ii) (emphasis added).

Clearly, the Order involves various issues; one concerns the quintessentially law-driven articulation of a test, which conflicts with EHT and was not the byproduct of controlling authority. Weber does not alter these realities. Rather, Weber stands for the meager proposition that the Third Circuit will decide for itself whether to weigh the Trusts' appeals at this juncture. Weber, 484 F.3d at 161 ("While it was not improper for the bankruptcy court to permit the parties to request leave to file a direct appeal and to certify the appeal, we decline to exercise our discretion to hear this appeal."). See also Millennium Lab, 543 B.R. at 708 ("Once certified, the Court of Appeals, in the exercise of its discretion, will determine whether to accept the appeal.").

Finally, the Court is not persuaded by Lehigh's fourth counterargument. The Court agrees that the Trusts would likely flunk any business trust test that has been articulated to date. But this is just one court's view. Perhaps the Third Circuit will accept the Trusts' invitation to hear their direct appeals. Conceivably the Third Circuit will articulate a novel test in the process or simply disagree with this Court's application of law to fact. Regardless, Lehigh cites no authority for the proposition that the Trusts' likelihood of success on the merits is relevant to the resolution of a request for certification under §158(d)(2)(A)–(B).

* * *

Although the foregoing settles this matter, Tribune Media, 2016 WL 1451161, at *2, the Court will briefly address the latter two Certification Factors. The Trusts present no convincing argument for why *their* cases would be materially advanced by direct appeal. Instead, the Trusts contend that their dismissal threatens the progress of the Manors'[6] cases by "putting [the Manors'] ability to formulate a Chapter 11 plan on hold until the fate of the Trust Debtors is determined." Mot. at 7. There are two problems with this assertion. First, progress of the Manors' bankruptcy cases is irrelevant. Their fates are not dispositive of the Trusts' under §158(d)(2)(A)–(B), any more than they were under §101(9)(a)(v). Second, the Court is troubled by any suggestion that the Manors cannot formulate a plan until the Trusts' appeals are resolved. Not least because the Manors recently moved for a forty-five day extension of the plan exclusivity period. [Case No. 25-15245, doc. #72]. Wherever the Trusts' appeals go from here, they are unlikely to be decided in forty-five days. Furthermore, the Trusts argue that certification will materially advance their cases because "[w]ithout binding precedent, the Trust Debtors could be mistakenly precluded from" reorganizing. This is unavailing. The Court would be bound in the Trusts' cases to accept any appellate decision rendered by the District Court.

Lastly, the Trusts assert that the absence of a binding business trust formulation in this Circuit is a matter of public importance. This is also unavailing. For §158(d) purposes, "matter[s] of public importance . . . 'transcend the litigants and involve a legal question the resolution of which will advance the cause of jurisprudence to a degree that is usually not the case.'" Millennium Lab, 543 B.R. at 709 (quoting In re Am. Home Mortg. Inv. Corp., 408 B.R. 42, 44 (D.

[6] The Manors operate personal care homes on real estate owned by their namesake Trusts. See Op. at 1–8.

Del. 2009)). The Trusts argue that there are many single asset real estate entities in this Circuit, and that these, like the Trusts, were formed as such to enable their participation in the United States Department of Housing and Urban Development's ("HUD") Healthcare Mortgage Insurance Program. The Trusts say these entities will benefit from clearer guidance under §101(9)(a)(v). But the Trusts surface no evidence that there are many single asset real estate *trusts* in this Circuit. To the Court's knowledge, participation in HUD's Program is not conditioned on the candidate entity's formation as a trust, rather than as a corporation or a limited liability company. Anyhow, all indications are that HUD does not even allow Program participants to file for bankruptcy. See Dx-21 ¶ 8; Op. at 5. Perhaps this helps explain why, by the Court's count, this Circuit has produced a total of five published §101(9)(a)(v) opinions in the roughly fifty years since the Bankruptcy Code was enacted.

* * *

Certification of the Trusts' appeals will not materially advance the progress of the Trusts' bankruptcy cases. Nor do their appeals involve a matter of public importance. Nevertheless, the Trusts' appeals do involve a question of law (*i.e.*, the proper definition of the term "business trust" within the meaning of the Bankruptcy Code) as to which there is no controlling decision. Moreover, there is a split among the lower courts in this Circuit regarding precisely this question. For these reasons, the Motion must be granted.