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September 3, 2024

The Honorable Karen B. Owens
United States Bankruptcy Court for the District of Delaware
824 North Market Street, 6th Floor
Wilmington, DE 19801

**Re: *Liberty Hall Capital Partners Fund I, L.P. v. Citizens Bank, N.A., et al.*;
Case No. 23-50772 (KBO)**

Dear Judge Owens:

McGuireWoods LLP and Bayard, P.A. (collectively, "Defense Counsel") represent Siemens Financial Services, Inc. ("Siemens") in the above-referenced adversary proceeding (the "Adversary Proceeding"). This letter responds to the August 29, 2024 letter [D.I. 29] (the "Letter") filed by Cole Schotz P.C. ("Plaintiff's Counsel"), counsel to Liberty Hall Capital Partners Fund I, L.P. ("Liberty Hall").

On August 16, 2024, Defense Counsel and Plaintiff's Counsel met and conferred by telephone on procedural next steps with respect to the Adversary Proceeding. At this meeting, Defense Counsel notified Plaintiff's Counsel that this Court lacked subject matter jurisdiction and that Siemens intended to move to dismiss the Adversary Proceeding on that basis. Plaintiff's Counsel asked for time to confer with Liberty Hall and formulate their position in connection with jurisdiction, to which Siemens agreed. On August 29, 2024, Plaintiff's Counsel notified Defense Counsel that it disagreed with Siemens' position that the Court lacks subject matter jurisdiction and then promptly filed the Letter that same day.

Despite Liberty Hall's baseless assertions regarding delay, the right to contest the subject matter jurisdiction of a federal court can never be forfeited or waived. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 501 (2006) (quoting *U.S. v. Cotton*, 535 U.S. 625, 630 (2002)). Siemens intends to file a second motion to dismiss under Rule 12(b)(1) of the Federal Rules of Civil Procedure, made applicable to the Adversary Proceeding by Rule 7012 of the Federal Rules of Bankruptcy Procedure. Rule 12(b)(1) motions for lack of subject matter jurisdiction may be raised anytime in an adversary proceeding and are expressly reserved in Rule 12(h)(3), which requires a federal court

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to dismiss an action at any time it determines it lacks subject matter jurisdiction. *See JCF AFFM Debt Holdings L.P. v. Affirmative Ins. Holdings, Inc. (In re Affirmative Ins. Holdings, Inc.)*, 565 B.R. 566, 578 (Bankr. D. Del. 2017) (stating that lack of subject matter jurisdiction may be raised at any time by the court, *sua sponte*, either at the trial or appellate level) (citing 5B Wright & Miller, *Federal Practice & Procedure* § 1350 (3d ed. 2004)); Fed. R. Civ. P. 12(h)(3). Contrary to Liberty Hall's assertions, Siemens does not need consent from Liberty Hall or leave from the Court to file its motion to dismiss for lack of subject matter jurisdiction. *See Halperin v. Richards (In re Oldapco, Inc.)*, 622 B.R. 140, 145 n.5 (Bankr. D. Del. 2020) (interpreting Rule 12(g) and Rule 12(h)(3) to allow parties to raise subject matter jurisdiction at anytime, regardless of a previously filed motion to dismiss).

This post-confirmation Adversary Proceeding involves litigation between two non-debtor parties: Siemens and Liberty Hall. Neither the Debtors, their Plan Administrator, nor any of the Debtors' other creditors will be impacted by the resolution of the claims between Siemens and Liberty Hall. Likewise, any resolution of those claims will not affect any orders previously entered in the main bankruptcy case. Accordingly, the proper place for this dispute is Delaware state court.

Siemens expects to file its motion to dismiss for lack of subject matter jurisdiction no later than September 9, 2024, and respectfully requests the Court to deny the requests of Liberty Hall and not to set any hearing on or take any action on Siemens' pending motions to dismiss until after the Court rules on Siemens' new jurisdictional motion to dismiss once it is filed and fully briefed. *See Fort Bend Cnty., Tex. v. Davis*, 587 U.S. 541, 549 (2019) (quoting *Gonzalez v. Thaler*, 565 U.S. 134, 141 (2012) for the proposition that subject matter jurisdiction may be raised by the defendant at any point in the litigation, and federal courts must consider such challenge *sua sponte*).

Dated: September 3, 2024
 Wilmington, Delaware

BAYARD, P.A.

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