

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PAULA NEGRO,		:	
	Plaintiff,	:	
		:	20-CV-10407 (JMF)
-v-		:	
		:	<u>ORDER</u>
AMTRUST NORTH AMERICA, INC.,		:	
	Defendant.	:	
-----X		:	

JESSE M. FURMAN, United States District Judge:

Now pending are two motions filed by Defendant AmTrust North America, Inc. (“AmTrust”): (1) a motion, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, to dismiss Plaintiff Paula Negro’s state-law claims as time-barred, *see* ECF No. 17; and (2) a motion to strike Negro’s jury demand, *see* ECF No. 18. Both motions depend on a document titled “Agreement to Bring Claims in Shortened Time Period and Waive Right to Jury Trial,” ECF No. 16-1 (“Shortened Time & Jury Waiver Agreement”), dated May 9, 2019.

Upon review of the parties’ submissions, the Court is inclined to believe that one critical — perhaps dispositive — question is whether the Shortened Time & Jury Waiver Agreement upon which AmTrust’s motions depend was incorporated by reference into a later agreement between the parties (the “Offer Letter”), dated May 10, 2019. On the one hand, the Offer Letter states that it “replaces any prior understandings, offers or agreements, whether oral, written or implied, between [Negro] and [AmTrust], regarding the terms of [Negro’s] employment or the matters described in [the Offer Letter].” ECF No. 25-3, at 3. On the other hand, the Offer Letter provides that it “is contingent on . . . [Negro’s] execution of . . . the Waive Right to Jury Trial Agreement before [Negro] start[ed] employment with [AmTrust].” *Id.* The question is: Is the

“Waive Right to Jury Trial Agreement” a reference to the Shortened Time & Jury Waiver Agreement — even though the latter bears a different title and pertains not only to the waiver of the right to a jury trial, but also the applicable limitations period? The parties’ briefs do not adequately address this question, if they address it at all.

In light of the foregoing, the parties are hereby ORDERED to submit supplemental briefs addressing the following issues:

1. Whether and to what extent the Court may consider the Offer Letter — which is not referenced in the parties’ pleadings and is instead raised for the first time as part of Negro’s opposition papers — in evaluating the pending motions.
2. The relevant standard for determining as a matter of law whether one agreement is incorporated by reference into another and whether, applying that standard, the Court can and should conclude as a matter of law that the Shortened Time & Jury Waiver Agreement is or is not incorporated by reference into the Offer Letter.
3. If the Court cannot resolve the prior question as a matter of law, whether the question of incorporation by reference is a factual question to be decided by the Court (and, if so, at an evidentiary hearing) or by a jury at trial; whether discovery on the issue would be warranted; and what the relevant standard at a hearing or trial would be.

The parties’ supplemental briefs may not exceed ten pages each and shall be filed no later than

**June 18, 2021.** No replies will be permitted absent leave of Court.

SO ORDERED.

Dated: June 4, 2021  
New York, New York



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JESSE M. FURMAN  
United States District Judge