

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

DONALD RINEHART, JR.	*	CIVIL ACTION
	*	
vs.	*	NO. 15-6266
	*	
NATIONAL OILWELL VARCO L.P., ET AL.	*	SECTION: L

ORDER AND REASONS

Before the Court is a Motion to Stay filed by Defendant Starfleet Marine Transportation, Inc. (“Starfleet”). (R. Doc. 103). Plaintiff opposes the Motion. (R. Doc. 105). Starfleet filed a notice of interlocutory appeal (R. Doc. 102) regarding this Court’s Order and Reasons denying Starfleet’s motion for partial summary judgment based on the *McCorpen* defense. (R. Doc. 101).

In its Order and Reasons, this Court found that record supported genuine issues of material fact regarding Starfleet’s *McCorpen* claim; specifically, whether Plaintiff willfully concealed a preexisting medical condition and, if so, whether such concealment or misrepresentation was material to Starfleet’s hiring decision. This is a factually-pregnant issue, and this Court found genuine issues of material fact, including Plaintiff’s credibility and competing medical testimony.

This Court did not foreclose the *McCorpen* defense, but rather found the issue should be presented at trial to be determined by the finder of fact. Accordingly, this order was not a final decision appealable under 28 U.S.C. §1291. Furthermore, as the *McCorpen* defense in this case is factually-pregnant and not a pure question of law, it does not meet the standard for appeal under 28 U.S.C. § 1292(b). §1292(b) provides a limited exception by which parties can appeal non-final orders upon written order from the District Court. Starfleet has not requested such certification in this case, and this Court declines to grant it in this factually-pregnant situation.

Accordingly, Starfleet has failed to demonstrate a likelihood of success on the merits. *See, e.g., Ruiz v. Estelle*, 666 F.2d 854, 856 (5th Cir. 1982).

For the foregoing reasons, **IT IS ORDERED** that Starfleet's Motion to Stay (R. Doc. 103) is **DENIED**.

New Orleans, Louisiana, this 25th day of May, 2017.


UNITED STATES DISTRICT JUDGE