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SCO's McBride: Rumors of our demise are greatly exaggerated

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(Computerworld) If the corporate Grim Reaper is truly knocking on the door of The SCO Group Inc., no one apparently told the company's CEO and president, Darl C. McBride.

Despite SCO's [a major court loss](#) last month in its legal case against Novell Inc., its [bankruptcy reorganization filing](#) and [an ominous-sounding quarterly U.S Securities and Exchange Commission filing](#)

last week in which SCO said there is "substantial doubt about the company's ability to continue as a going concern," McBride insists that no one should be lining up yet for his company's funeral parade.

On the heels of all of that news, Nasdaq even got into the act by announcing that SCO [would be delisted](#) from the stock exchange because the price of its stock had fallen below \$1 per share. An appeal by SCO has delayed that action for now.

Since 2003, SCO and Novell have been fighting over who legally owns the rights to Unix and UnixWare. That's when Lindon, Utah-based SCO sued IBM in what became a \$5 billion lawsuit, alleging that IBM illegally contributed some of SCO's Unix code to the then-fledgling Linux open-source project. In 2004, SCO sued Novell directly, prompting Novell to file counterclaims disputing SCO's case.

In August, U.S. District Court Judge Dale A. Kimball in Salt Lake City undercut much of SCO's case in a ruling that declared Novell the owner of the Unix and UnixWare copyrights. As a result, a bench trial will determine how much money SCO might now have to pay Novell for Unix licensing revenue it received from Sun Microsystems Inc. and Microsoft Corp. That trial was supposed to begin last month but was postponed [because SCO filed for bankruptcy](#).

In an exclusive interview with *Computerworld* on Friday, McBride said he's frustrated that the bankruptcy filing and Nasdaq delisting proceedings are making news at a time when his company has been working to reinvent itself with upcoming mobility products and services.

"[There's] the view out there that we're just dead and everybody's claiming victory over SCO," he said. "It's almost like the World Series is over and the only thing that hasn't happened is the victory parade. It's like the Linux faithful are lined up ... for the bad news. They've got their confetti ready to throw and everybody's all excited, and they have their floats. Sam [Palmisano, chairman and CEO of IBM] has his, Linus [Torvalds, creator of the Linux kernel] has his and everybody's pitching in. Groklaw [a Web site that has been monitoring the SCO-IBM case] and their followers are all there. Everybody's saying this thing's all over and now let's have a victory parade."

Instead, he insists, it's too early to call the final results of the case.

"It's a little bit strange that that's how things are being portrayed, while, in fact, this is still early in the game," he said. "OK, we had a bad [court] ruling, but one bad ruling does not a legal full conclusion make, so it's a

little interesting to me that things are being written off as quickly as they are. If it were [just] Groklaw, it would be one thing, but it seems like the mainstream press, all the way to Associated Press and Reuters ... it seems like almost everyone ... has sort of gone down this path that it's over."

One problem, he said, is that the bankruptcy filing is being improperly described in some places. "It appears that there are a lot of people who are missing the finer points of bankruptcy law between Chapter 11 [reorganization] and Chapter 7 [liquidation]," McBride said. "We're in the type of bankruptcy that Texaco and Dow Corning and Kmart and United Air Lines and Delta Air Lines and Macy's have been through," where the companies have reorganized their assets and debts and remained in business.

"It seems like we're lumped into the other type, which is more of a liquidation event and [the company] goes out of business," he said. "We are trying to reinforce that we are in the middle of reorganizing, restructuring, looking at some new ways we're going to be doing things going forward. We do have discussions here with folks that I can't get into the details of, but I believe there's going to be some opportunity to have some added boost, if you will, to what we're doing here -- depending on how and when we partner up with these folks."

Behind the scenes, though, McBride said SCO's legal team has unearthed some details about Kimball's rulings that may provide a glimmer of hope for his company's ongoing fight.

"There's one little tidbit that we came across just a few days ago," he said. "Whereas the popular press has said, 'OK, this thing is now over,' there is an appeal process and the other fact is that if you look inside that appeals process and you take a microscope and look at the record of Kimball's summary judgment rulings that have gone to appeals, he gets overturned the vast majority of the time. It's nearly two-thirds of the time. That was something I was a little curious about myself."

"This apparently is a [judge] who very regularly, the majority of the time, gets [overturned] when it goes to the replay booth. That's the one sort of a news fact that's not out there today that [could] maybe temper some of this enthusiasm out there" about SCO's troubles. "He certainly has a dismal record on appeals."

In the meantime, SCO will make announcements in the next couple weeks that show it is still very much in business, he said.

Sounding tired after the last few weeks, McBride said, "I understand that we're going through this. Business will be up. Some will be down. You're a publicly traded company and you have to report that you traded below a dollar and that you have another Nasdaq hearing. The pile-on effect doesn't tend to go away on some of that stuff. I guess on the merits, we're moving forward and we have some optimism around all of the other crazy stuff that's going on."

McBride said, "it was definitely not in the strategic plan that we drew up when we started planning all this out" when he joined SCO in 2002. "But you know, you take the cards you're dealt with and that's where we are right now."

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