

MSD SBI LP
Form 3
March 19, 2009

FORM 3 UNITED STATES SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL

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INITIAL STATEMENT OF BENEFICIAL OWNERSHIP OF SECURITIES

Filed pursuant to Section 16(a) of the Securities Exchange Act of 1934,
Section 17(a) of the Public Utility Holding Company Act of 1935 or Section
30(h) of the Investment Company Act of 1940

(Print or Type Responses)

| | | | | |
|---|---------|--------------------------------------|--|--|
| 1. Name and Address of Reporting Person * | | 2. Date of Event Requiring Statement | 3. Issuer Name and Ticker or Trading Symbol | |
| MSD CAPITAL L P | | (Month/Day/Year) | ASBURY AUTOMOTIVE GROUP INC [ABG] | |
| (Last) | (First) | (Middle) | 03/16/2009 | |
| 645 FIFTH AVENUE, 21ST FLOOR | | | 4. Relationship of Reporting Person(s) to Issuer | 5. If Amendment, Date Original Filed(Month/Day/Year) |
| (Street) | | | (Check all applicable) | |
| NEW YORK, NY 10022 | | | <input type="checkbox"/> Director | <input checked="" type="checkbox"/> 10% Owner |
| (City) | (State) | (Zip) | <input type="checkbox"/> Officer | <input type="checkbox"/> Other |
| | | | (give title below) | (specify below) |
| | | | | 6. Individual or Joint/Group Filing(Check Applicable Line) |
| | | | | <input type="checkbox"/> Form filed by One Reporting Person |
| | | | | <input checked="" type="checkbox"/> Form filed by More than One Reporting Person |

Table I - Non-Derivative Securities Beneficially Owned

| 1. Title of Security (Instr. 4) | 2. Amount of Securities Beneficially Owned (Instr. 4) | 3. Ownership Form: Direct (D) or Indirect (I) (Instr. 5) | 4. Nature of Indirect Beneficial Ownership (Instr. 5) |
|---------------------------------|---|--|---|
| Common Stock | 3,639,395 | I | See Footnotes (1) (2) (3) (4) |

Reminder: Report on a separate line for each class of securities beneficially owned directly or indirectly.

SEC 1473 (7-02)

Persons who respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

Table II - Derivative Securities Beneficially Owned (e.g., puts, calls, warrants, options, convertible securities)

| 1. Title of Derivative Security (Instr. 4) | 2. Date Exercisable and Expiration Date (Month/Day/Year) | 3. Title and Amount of Securities Underlying Derivative Security (Instr. 4) | 4. Conversion or Exercise Price of Derivative Security | 5. Ownership Form of Derivative Security: Direct (D) | 6. Nature of Indirect Beneficial Ownership (Instr. 5) |
|--|--|---|--|--|---|
| | | Title | | | |

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| | Date Exercisable | Expiration Date | | Amount or Number of Shares | | or Indirect (I) (Instr. 5) | |
|----------------------------------|------------------|-----------------|--------------|----------------------------|--|----------------------------|---------------------------------------|
| 3% Senior Sub. Convertible Notes | Â (5) | Â (5) | Common Stock | 131,314 \$ 33.85 | | I | See Footnotes (1) (2) (3) (4) (5) |
| Total Return Equity Swap | Â (6)(7) | 09/17/2018 | Common Stock | 113,300 \$ 3.5139 | | I | See Footnotes (1) (2) (3) (4) (6) (7) |
| Total Return Equity Swap | Â (6)(7) | 09/17/2018 | Common Stock | 444,600 \$ 3.5347 | | I | See Footnotes (1) (2) (3) (4) (6) (7) |
| Total Return Equity Swap | Â (6)(7) | 09/17/2018 | Common Stock | 165,800 \$ 3.2879 | | I | See Footnotes (1) (2) (3) (4) (6) (7) |
| Total Return Equity Swap | Â (6)(7) | 09/17/2018 | Common Stock | 200,000 \$ 2.9692 | | I | See Footnotes (1) (2) (3) (4) (6) (7) |

Reporting Owners

| Reporting Owner Name / Address | Relationships | | | |
|---|---------------|-----------|---------|-------|
| | Director | 10% Owner | Officer | Other |
| MSD CAPITAL L P 645 FIFTH AVENUE 21ST FLOOR NEW YORK, NY 10022 | Â | Â X | Â | Â |
| MSD SBI LP 645 FIFTH AVENUE 21ST FLOOR NEW YORK, NY 10022 | Â | Â X | Â | Â |

Signatures

By: MSD Capital Management LLC, Its General Partner. /s/ Marc R. Lisker, Manager and General Counsel 03/18/2009

**Signature of Reporting Person Date

By: MSD Capital, L.P., Its General Partner. By: MSD Capital Management LLC, Its General Partner. /s/ Marc R. Lisker, Manager and General Counsel 03/18/2009

**Signature of Reporting Person Date

Explanation of Responses:

* If the form is filed by more than one reporting person, see Instruction 5(b)(v).

** Intentional misstatements or omissions of facts constitute Federal Criminal Violations. See 18 U.S.C. 1001 and 15 U.S.C. 78ff(a).

(1) This statement is jointly filed by and on behalf of each of MSD Capital, L.P. and MSD SBI, L.P. MSD Capital is the general partner of MSD SBI and may be deemed to beneficially own securities owned by MSD SBI. MSD Capital Management LLC is the general partner of MSD Capital and may be deemed to beneficially own securities owned by MSD Capital. Michael S. Dell is the controlling member of MSD Capital Management and may be deemed to beneficially own securities owned by MSD Capital Management.

(2) Each reporting person states that neither the filing of this statement nor anything herein shall be deemed an admission that such person is, for purposes of Section 16 of the Act or otherwise, the beneficial owner of any securities covered by this statement. Each reporting person disclaims beneficial ownership of the securities covered by this statement, except to the extent of the pecuniary interest of such person in such securities.

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- Each reporting person may be deemed to be a member of a group with respect to the issuer or securities of the issuer for the purposes of Section 13(d) or 13(g) of the Act. Each reporting person declares that neither the filing of this statement nor anything herein shall be construed as an admission that such person is, for the purposes of Section 13(d) or 13(g) of the Act or any other purpose, a member of a group with respect to the issuer or securities of the issuer.
- (3) Represents securities owned by MSD SBI.
- Represents \$4,445,000 in aggregate principal amount of 3% Senior Subordinated Convertible Notes of the issuer due September 15, 2012. The notes are generally convertible at the option of the holder from June 15, 2012 to maturity into common stock of the issuer at the then-effective conversion price for the notes, which is subject to adjustment. According to the Form 10-K filed by the issuer on March 16, 2009, as of December 31, 2008, the effective conversion price for the notes was \$33.85 per share.
- (5) Represents a cash-settled total return equity swap entered into by MSD SBI with Citibank, NA New York relating to shares of common stock of the issuer. Under the terms of each total return swap: (i) MSD SBI will be obligated to pay to Citibank any negative price performance of the shares of common stock subject to such total return swap as of the expiration date of such total return swap, plus interest; and (ii) Citibank will be obligated to pay to MSD SBI any positive price performance of the shares of common stock subject to such total return swap as of the expiration date of such total return swap. An amount equal to any dividends received by Citibank on the shares of common stock during the term of each such total return swap will be paid to MSD SBI.
- (6) All balances will be cash settled at the expiration date of each total return swap. MSD SBI has the right to terminate and close out each total return swap early if it so chooses. None of the total return swaps gives MSD SBI direct or indirect voting, investment or dispositive control over any securities of the issuer or requires Citibank to acquire, hold, vote or dispose of any securities of the issuer. Accordingly, MSD SBI disclaims any beneficial ownership in securities that may be referenced in any such total return swap.
- (7) Note: File three copies of this Form, one of which must be manually signed. If space is insufficient, *See* Instruction 6 for procedure. Potential persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB number.