



The Critical Role of Advertising Media Planning in Federal 'Rule 23' Class Action Notice

R. Michael Hoefges
Trinity University
Kent M. Lancaster
University of Florida

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Class Actions and Notice

- **Federal Rule 23(b)(3) Class Actions**
 - *Agent Orange* and other examples
- **Mandatory Notice Provisions**
 - Certification Notice:
 - Identifiable members: Individual notice
 - Non-Identifiable: “[B]est notice practicable”
 - Settlement Notice: “[S]uch manner as the court directs”
- **“Settlement Classes”**



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Class Action Notice in Practice

- **U.S. Supreme Court**
 - *Eisen v. Carlisle & Jacquin* (1974)
 - *Mullane v. Central Hanover Bank & Trust* (1950)
- **Manual for Complex Litigation, 3d**
 - Provides little guidance for judges
- **Trends and Role of Media Experts**



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Normative Framework

- **Court Opinions: Lack of Clear Analytical Approach**
- **Evaluative Factors: Design & Approval of Notice Plan**
 - Target Audience
 - Media Selection
 - Audience Measurement
 - Vehicle Reach v. Message or “Notice” Reach
 - Cost Efficiency



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A Case Analysis

Shores v. Publix Supermarkets, Inc.
Rule 23(b)(3) Class Action
(January 27, 1997)

- Suit alleged Publix had discriminated against female employees
- Largest gender bias class action in US history
- Notice plan targeted to 160,000 women in AL, FL, GA, & SC who worked for Publix between 1991 and 1997
- Simultaneous certification and settlement notice through payroll notification, direct mail, and newspaper advertising



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Court-Ordered Notice Plan

- Paid advertising in local newspapers used to reach absentee class members who could not be notified individually
- 62 newspapers in AL, FL, GA, & SC
- 1/2 page B&W notice required in each newspaper once per week for three weeks (one Sunday issue)
- Notice order did not estimate the number of women to be reached



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Method

- Newspaper coverage analyzed by DMAs within and across states
- Audited circulation figures obtained from SRDS *Circulation 98* and *1998 Working Press of the Nation*
- MGM daily and Sunday reader averages applied to each newspaper to estimate **publication** ratings
- 19.8% exposure probability used to estimate 1/2 page, B&W **message** rating against adult women



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Method (continued)

- **Snapshots 1997-1998** provided market, media, cost, and female population data for each DMA
- **Plan analyzed against adult females in:**
 - each DMA
 - all selected DMAs in a state
 - all 20 DMAs in four states combined
- **Audience and cost data analyzed using Telmar's ADplus™**
 - uses BBMD model
 - estimates duplication within and between DMA newspapers
 - computes standard media evaluation factors

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Summary of Shores Notice Plan Coverage and Cost

State/DMA	Adult Females		Reach 1+		Notice Cost	
	Paper	Notice	Total	CPM	Total	CPM
Alabama	329,197	30.0	9.8	\$8,017	\$194	
Huntsville-Decatur-Florence	329,197	30.0	9.8	8,017	194	
Florida	5,737,556	48.7	18.2	\$40,004	\$368	
Miami-Ft. Lauderdale	1,441,639	46.4	17.3	148,949	434	
Tampa-St. Petersburg-Clearwater	1,425,149	55.3	21.7	170,018	384	
Orlando-Daytona Beach-Melbourne	1,025,614	46.8	17.2	86,581	359	
West Palm Beach-Ft. Pierce	584,215	47.6	17.5	34,471	246	
Jacksonville-Brunswick	503,735	48.1	17.3	41,744	344	
Ft. Myers	315,234	51.6	19.7	31,876	370	
Tallahassee-Thomasville	228,203	37.4	13.2	14,481	354	
Panama City	114,266	35.1	11.7	2,057	118	
Gainesville	99,501	48.8	16.8	9,827	442	
Georgia	2,716,998	30.8	10.4	\$144,415	\$353	
Atlanta	1,663,753	31.2	10.4	97,076	406	
Savannah	265,916	33.1	11.4	16,725	409	
Augusta	233,640	43.2	15.1	15,000	319	
Macon	212,955	40.6	13.7	10,393	274	
Columbus	198,678	1.9	0.6	0	0	
Albany	142,056	27.3	9.1	5,221	295	
South Carolina	1,511,399	29.9	10.3	\$75,878	\$323	
Greenville-Spartanburg-Asheville-Anderson	725,376	29.8	10.6	40,871	401	
Columbia	326,666	36.7	12.2	18,304	354	
Charleston	234,546	45.9	15.5	16,703	351	
Florence-Myrtle Beach	224,811	3.5	1.2	0	0	
Four States Combined	10,295,150	40.6	14.7	\$768,314	\$352	

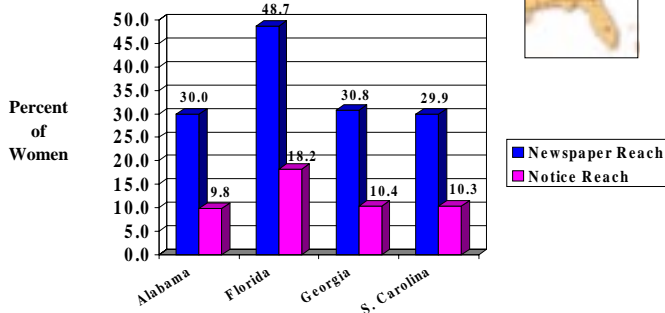
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Results by State

- **One Alabama newspaper**
 - 30% received at least one issue w/notice
 - 9.8% likely to have seen notice
- **39 Florida newspapers**
 - 48.7% received at least one issue w/notice
 - 18.2% likely to have seen notice
- **15 Georgia newspapers**
 - 30.8% received at least one issue w/notice
 - 10.4% likely to have seen notice
- **7 South Carolina newspapers**
 - 29.9% received at least one issue w/notice
 - 10.3% likely to have seen notice

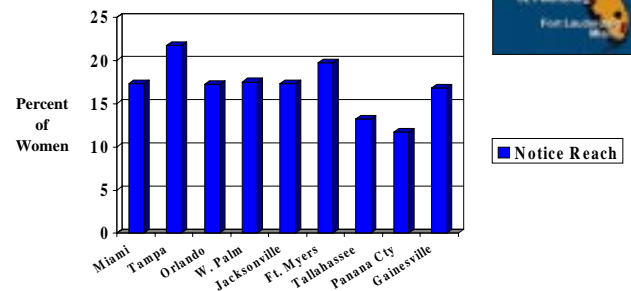
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Shores Newspaper and Notice Reach



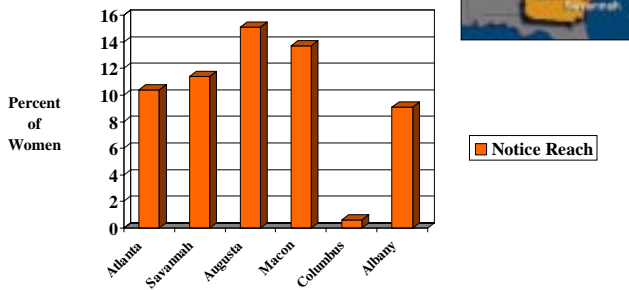
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Notice Coverage in Florida



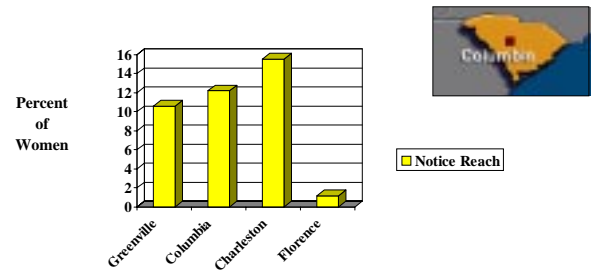
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Notice Reach in Georgia



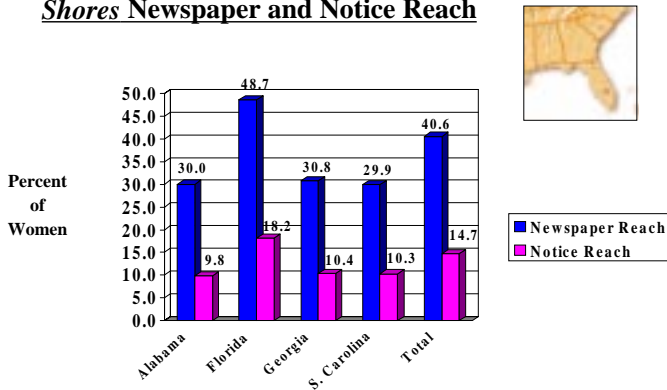
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Notice Reach in South Carolina



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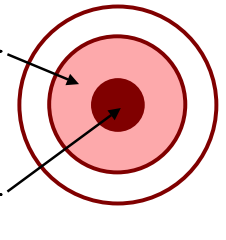
Shores Newspaper and Notice Reach



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Four-state Results

- Media coverage included 62 newspapers across 20 DMAs
- 40.6% of 10,295,150 adult women likely to have received one issue of a newspaper containing the notice
- Only 14.7% (1,513,887) likely to have seen the newspaper notice



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Four-state Results (Continued)

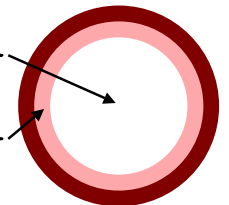
- 149,095 of 160,750 class members (93%) received individual notice through payroll or direct mail
- Final plan cost was \$401,012--74% spent on newspaper advertising
- Individual notice coverage and media costs unknown at time of court approval



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Discussion

- 59.4% of adult women (6.1 million) in the 20 DMAs did not receive a newspaper containing the notice
- 85.3% (8.8 million) probably did not see the newspaper notice
- Variation in efficiency across DMAs
- Despite high coverage of individual notice (through payroll notification and direct mail), the newspaper plan was ineffective in delivering notice to women



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Conclusions

- Analyses suggest this publication plan does **not** provide the “best notice practicable under the circumstances”
- Courts could benefit from **message-driven** media analysis to determine where, when, and how often to place class action notices
- **Message-driven** analysis is critical when the mass media are the only means of providing notice