



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

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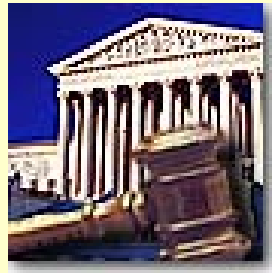
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Class Actions and Notice

- **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”**



Class Action Notice in Practice

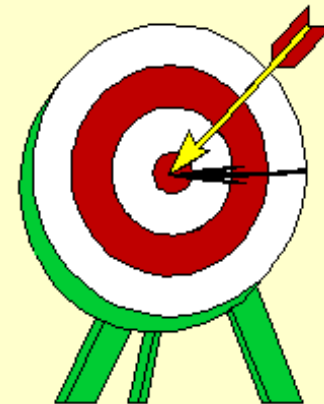


- **U.S. Supreme Court**
 - *Eisen v. Carlisle & Jacquelin* (1974)
 - *Mullane v. Central Hanover Bank & Trust* (1950)
- **Manual for Complex Litigation, 3d**
 - Provides little guidance for judges
- **Trends and Role of Media Experts**



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



A Case Analysis

Shores v. Publix Supermarkets, Inc.

Rule 23(b)(3) Class Action

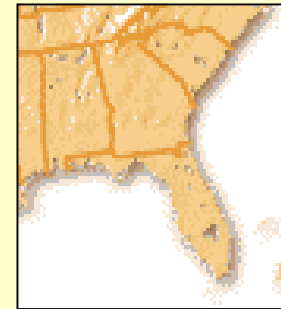
(January 27, 1997)




- 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

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



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

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

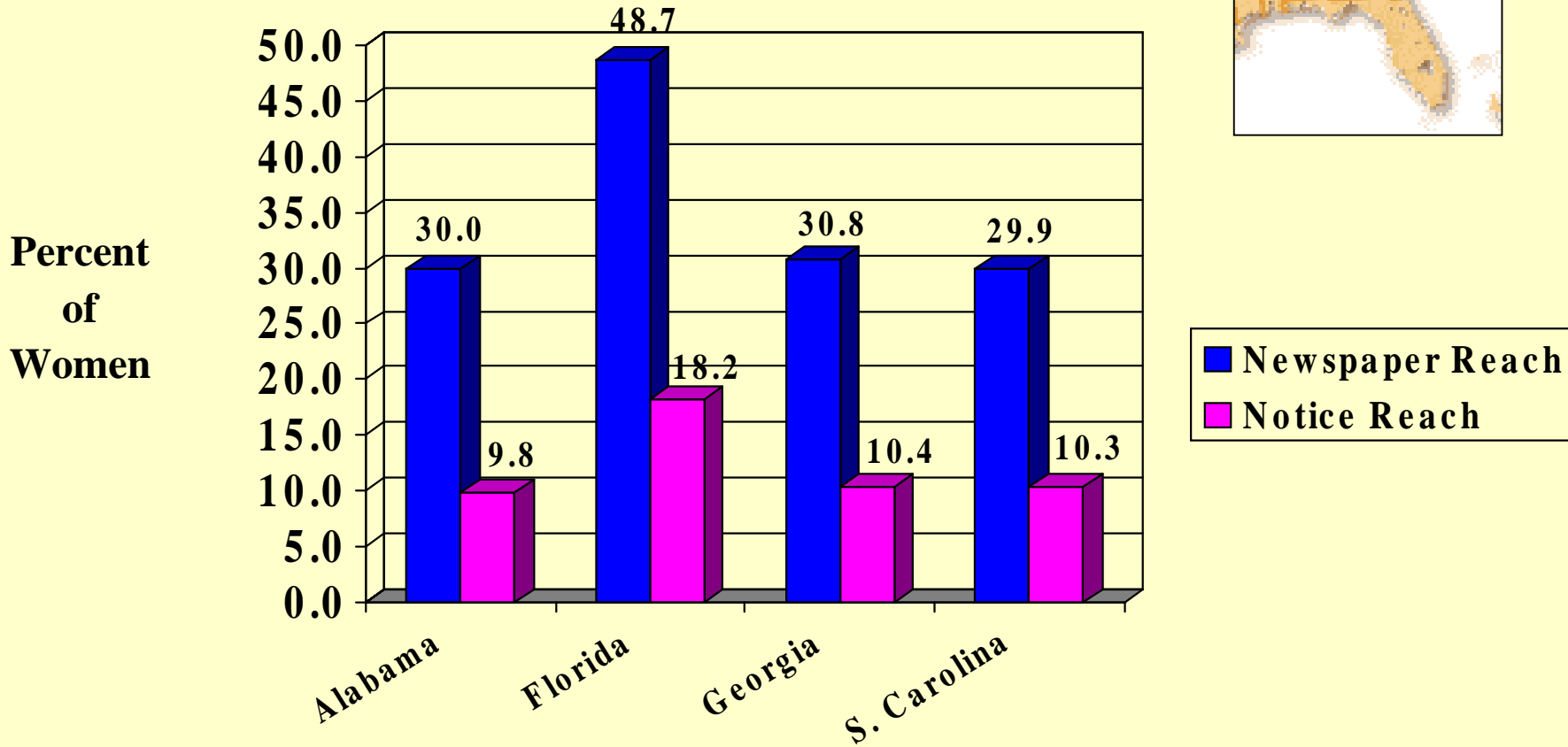
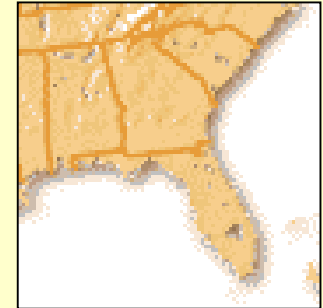
Summary of *Shores* Notice Plan Coverage and Cost

State/DMA	Adult Females	Reach 1+		Notice Cost	
		Paper	Notice	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	540,004	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

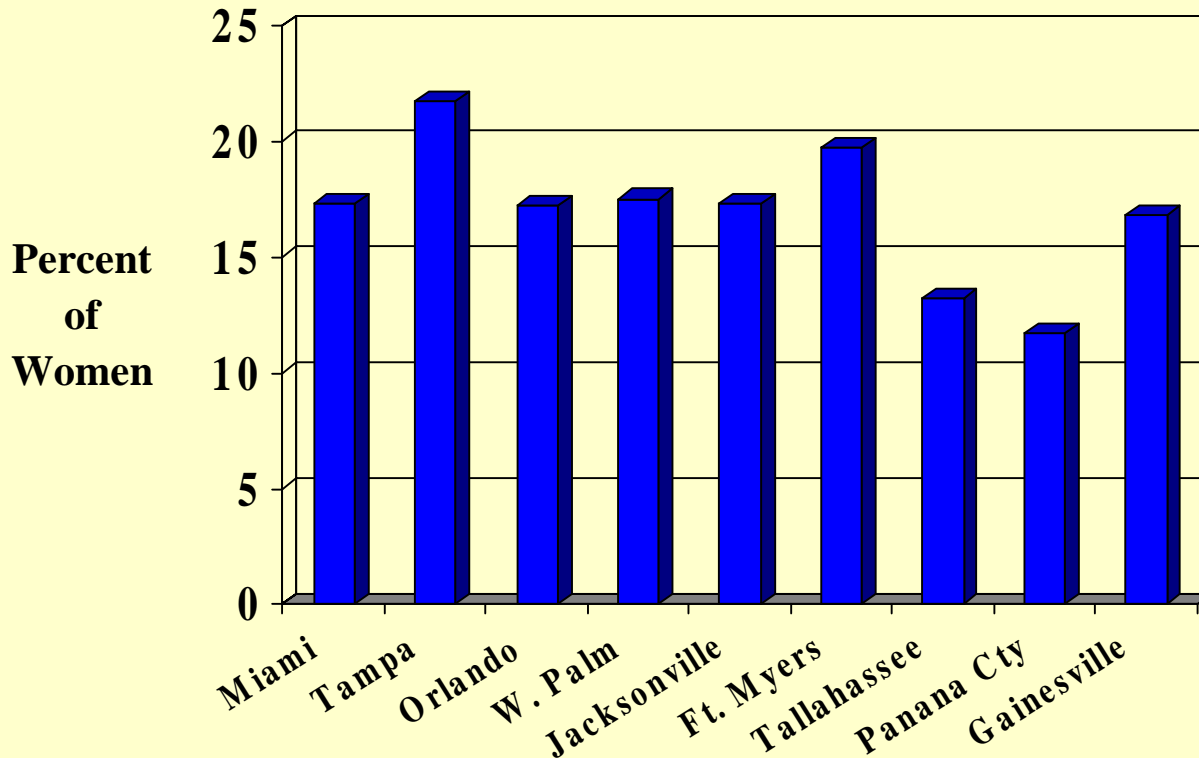
Results by State

- **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

Shores Newspaper and Notice Reach

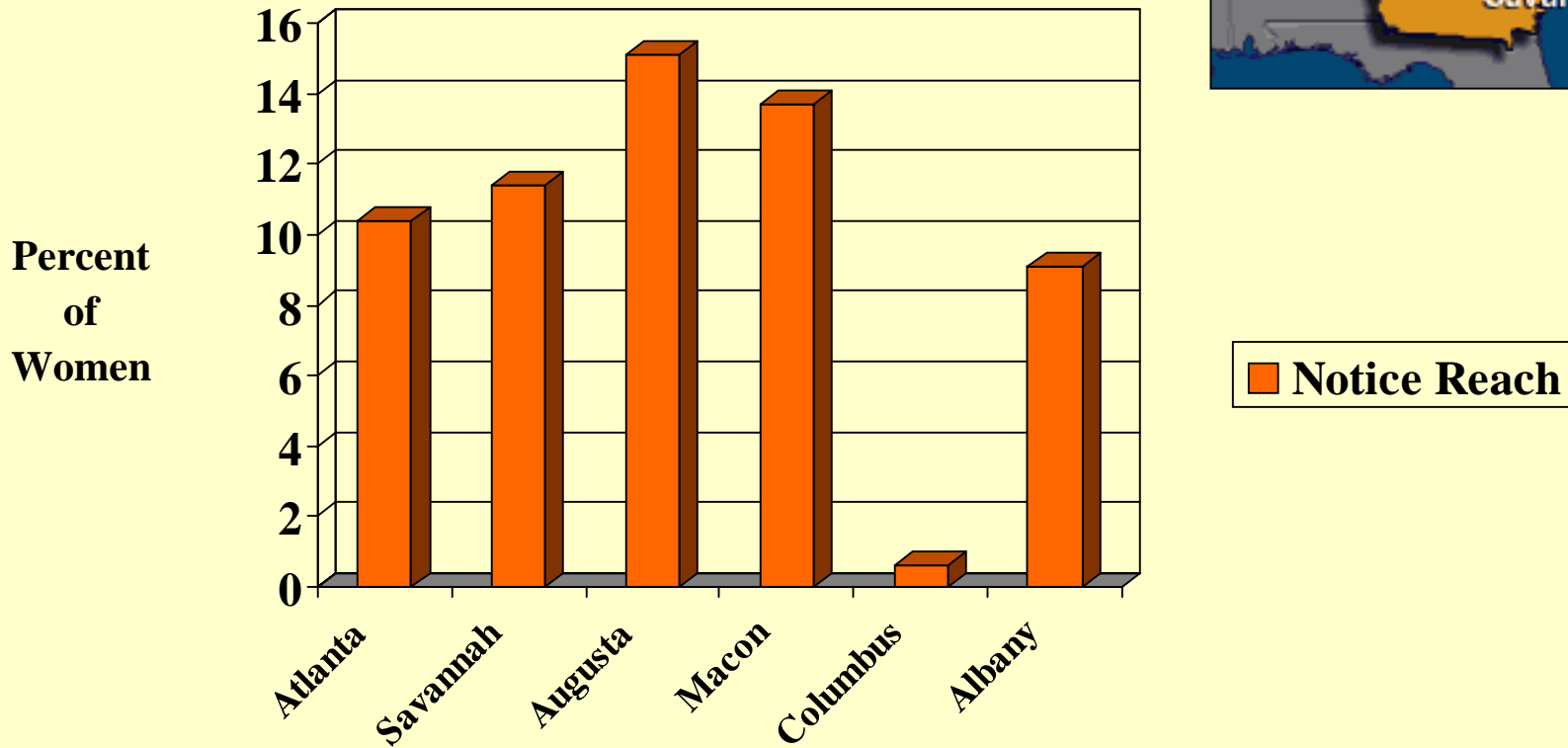


Notice Coverage in Florida



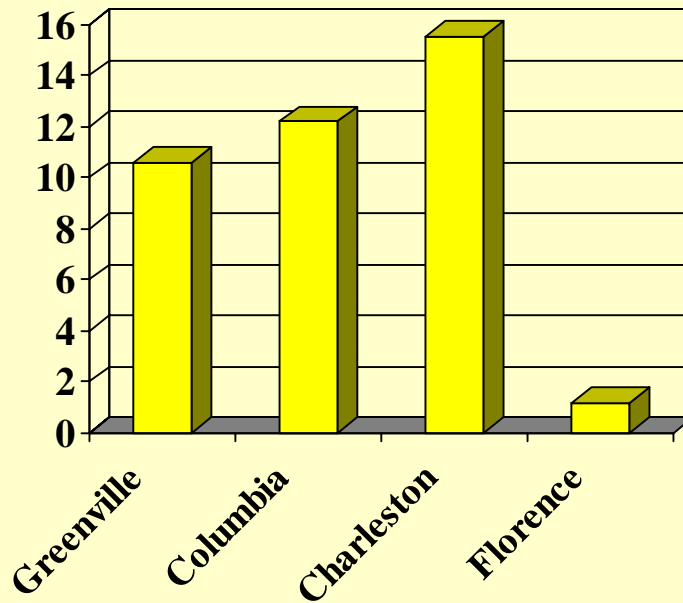
■ Notice Reach

Notice Reach in Georgia



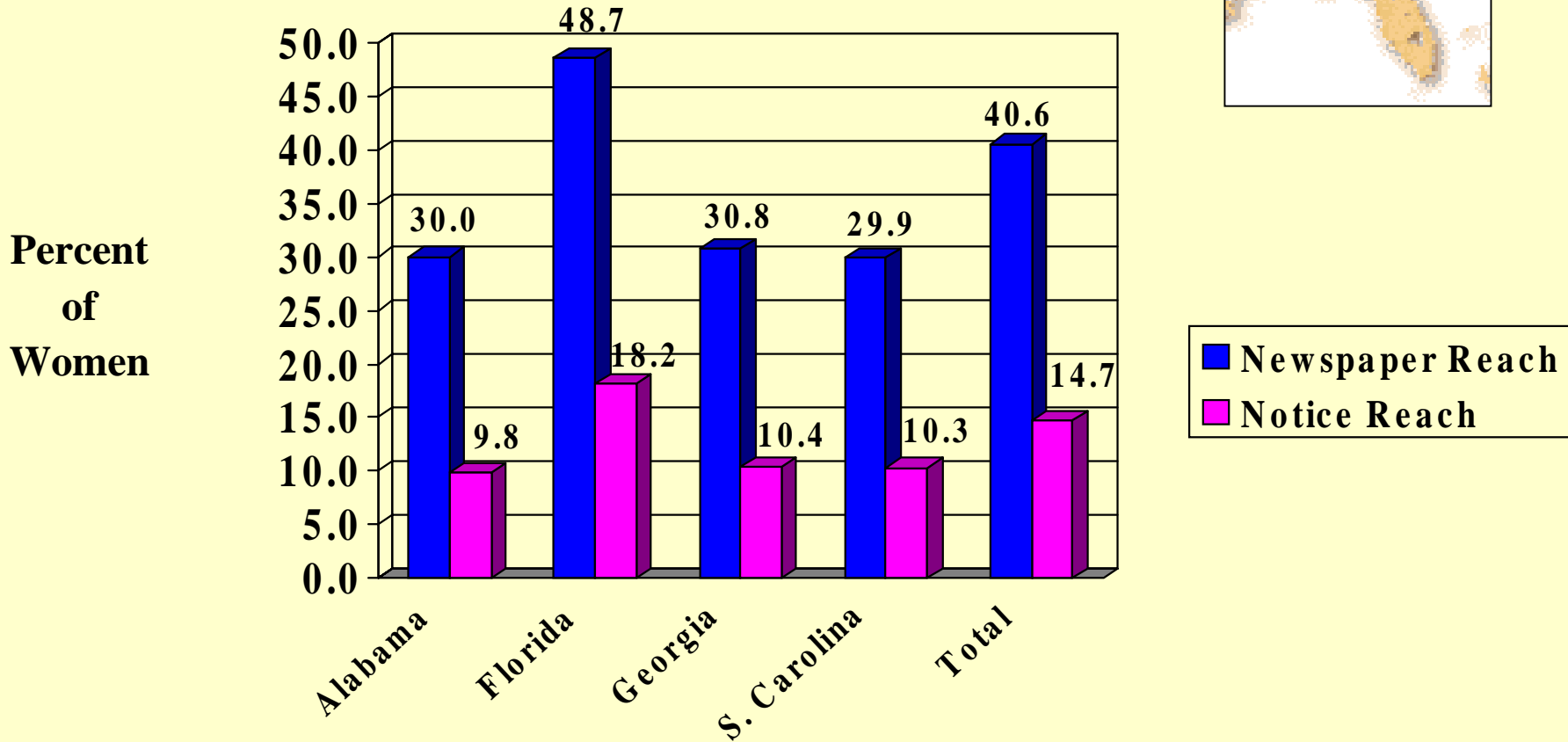
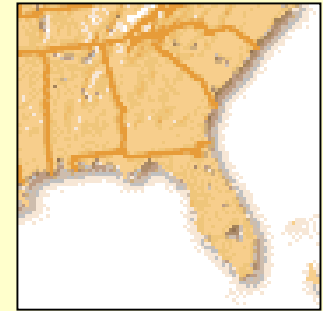
Notice Reach in South Carolina

Percent
of
Women



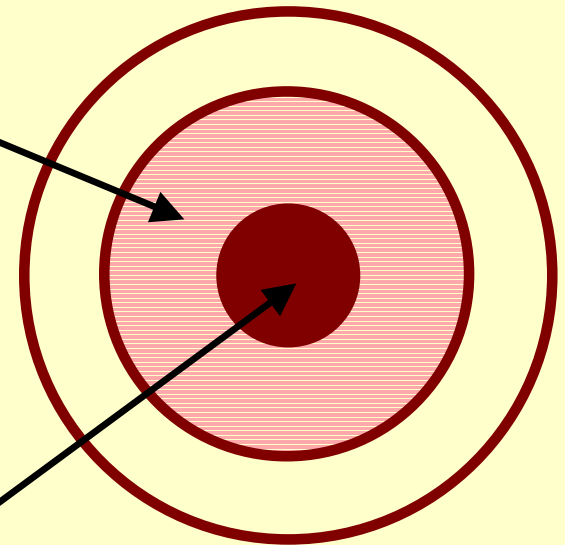
■ Notice Reach

Shores Newspaper and Notice Reach



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



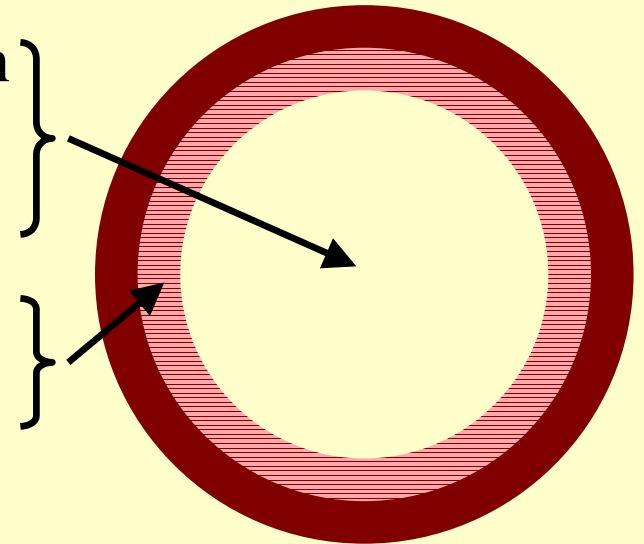
Four-state Results *(Continued)*

- 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



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



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