4. (2 points)

   a. (0.75 point)

      Fully describe the Paul v. Virginia court case, including the implications for insurance regulation.

   b. (0.75 point)

      Fully describe the Supreme Court's decision in the Southeastern Underwriters Association (SEUA) case.

   c. (0.5 point)

      Briefly describe two recommendations of the NAIC immediately following the SEUA decision.

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regulatory interventions associated with troubled insurance companies.
Part a
Candidates were expected to identify three reasons for insurer insolvencies. A common mistake was providing a response that lacked direct causal connection to a subsequent insurer insolvency. For example "entering into a new line of business" does not have a causal connection to insolvency without additional information being provided.
Part b
Candidates were expected to discuss four stages of regulatory intervention. A common mistake was providing a description that was inconsistent with the item listed. For example, listing "rehabilitation" then explaining liquidation.
Part c
Candidates were expected to describe one reason that regulators would be slow to intervene with a financially troubled insurer. Common mistakes included: • Stating that the regulators are lax because the guarantee funds act as a backstop. An insolvency that requires a guarantee fund payout may result in assessments to other insurers, which is a concern for regulators. • Stating that regulators have no authority to intervene. There are specific regulatory periods that provide regulators the authority to intervene.

SPRING 2019 EXAM 6US, QUESTION 4	
TOTAL POINT VALUE: 2	**LEARNING OBJECTIVE: A4**
SAMPLE ANSWERS	
Part a: 0.75 point	
Sample responses for circumstances: • Paul was arrested for selling insurance in his home state of Virginia on behalf of insurers domiciled in New York because he was denied a license to sell insurance since the insurers had not deposited the bond required from Virginia. • Paul was a VA resident looking to sell insurance for a NY insurer who did not deposit the necessary capital with VA to operate in the state. Paul sold anyway and was arrested. • Paul applied to sell New York based insurance policies in Virginia. The company had not submitted the required capital in Virginia, so Paul's license was denied. He sold the policies anyway and as convicted. • Paul tried to sell insurance for a foreign company and was arrested for not being properly licensed. *Sample responses for results:* • Supreme Court said insurance was not interstate commerce and so states can regulate.	

- Supreme Court ruled insurance contract is delivered locally so regulated by states as it was not interstate commerce.
- Supreme Court decided that insurance was not interstate commerce and not subject to federal laws. It left regulation to the states.

Part b: 0.75 point

Sample 1

- The Supreme Court deemed the SEUA's acts as collusion, bullying, and anti-trust. They decided insurance was considered interstate commerce and thus insurance was regulated at federal level. This caused all federal legislation (Sherman, Clayton, etc.) to apply to insurance.

Sample 2

- Supreme Court overturned decision made in *Paul v. Virginia* case by ruling that insurance is interstate commerce and thus should be subject to Sherman Antitrust Act.

Sample 3

- After ruling that insurance should not be treated differently than any other business of interstate commerce, Supreme Court decided insurance was subject to federal regulation. They thought the Sherman Antitrust Act intended to prevent business like insurance from collusion and forming monopolies. Before this insurance was the only business operating interstate, yet not subject to the Interstate Commerce Clause.

Sample 4

- The Supreme Court concluded that the Sherman Act did not mean to exclude insurance from having to comply. So boycott, coercion, intimidation, etc. were prohibited in insurance. Additionally, other intangible products such as telegraph communications across states were considered commerce among several states, so insurance should be as well.

Sample 5

- Supreme Court ruled that insurance was not unique to each state and was subject to federal regulation, including Sherman Anti-trust act. Made boycott, collusion, coercion illegal and ruled that the business of insurance was interstate commerce.

Sample 6

- Ruled that Sherman Act did apply to insurance companies to prohibit acts in an attempt to gain monopoly power. Insurance is interconnected among states. Other intangible products such as telegraph communications selling across states are subject to federal regulation, insurance should be no different.

Part c: 0.5 point

Any two of the following:

- The FTC Act and Robinson-Patman Act should be amended to exclude insurance
- The Sherman Act and Clayton Act should be amended to allow cooperation to establish adequate rates and coverage
- NAIC recommended that rate regulation be returned to the states
- Allow compacts/sharing of information for ratemaking in order to prevent insolvencies
- Limit federal regulation of insurance and return power to the states
- NAIC recommended that bureau ratemaking be made legal again

EXAMINER'S REPORT

Candidates were expected to demonstrate an understanding of *Paul v. Virginia*, the decision and rationale of the SEUA court case, and the NAIC's subsequent recommendations as it pertains to the business of insurance and regulation of the industry.

Part a

Candidates were expected to explain the circumstances and results of *Paul v. Virginia*.

Common mistakes regarding the circumstances included:

- Stating that Paul had not posted the required foreign bond, as it was the New York insurer who had not made the deposit
- Not mentioning that the carrier Paul represented was out of state
- Failing to mention that Paul was selling insurance policies illegally/unlicensed
- Stating that Paul's actions were illegal because brokers were only allowed to do business in one state, as this is an inaccurate description

Common mistakes regarding the results included:

- Neglecting to mention that the Supreme Court ruled insurance was not interstate commerce/delivered locally
- Stating that Court ruled insurance falls under federal regulation, as this is not accurate

Part b

Candidates were expected to explain the considerations behind the SEUA decision and the ramifications of the decision on the insurance industry.

Common mistakes included:

- Failing to mention that the Supreme Court decided insurance was interstate commerce/interconnected/not distinct in each state
- Failing to mention that the Supreme Court ruled that the Sherman Antitrust Act was intended to apply to insurance companies, or that antitrust activities were illegal
- Stating that the Supreme Court decided the SEUA was illegal without providing additional details
- Incorrectly stating that the Courts gave regulatory power to the states, as the case resulted in federal regulation of insurance

Part c
Candidates were expected to identify two recommendations of the NAIC immediately following the SEUA decision. Common mistakes included: • Listing any of the model laws developed by the NAIC. These were drafted after the McCarran-Ferguson Act and not immediately after the SEUA decision • Stating that NAIC recommended overturning the SEUA decision, without providing any additional details (such as overturning the decision in order to return regulation back to the states) • Recommending that the Sherman Act and/or Clayton Act be amended to *exclude* insurance, as the NAIC only recommended to amend these acts to allow for cooperative rate setting

SPRING 2019 EXAM 6US, QUESTION 5	
TOTAL POINT VALUE: 2	**LEARNING OBJECTIVE: A4**
SAMPLE ANSWERS	
Part a: 1 point	
Sample responses for part (i) • Identifies and made illegal activities that lessoned competition and created monopoly power. • Prohibits anti-competitive behavior • Identifies and made illegal activities that lessoned competition *Sample responses for part (ii)* • Prohibits price discrimination unless differences arise from operational costs • Required that differences in prices be based on differences in operational costs.	
Part b: 0.75 point	
• Federal law applies to "business of insurance" if there is no state law regulating the business referenced in a federal law. • However, Sherman act continues to apply to antitrust activities (or boycott, intimidation, coercion) • Any federal law specific to the business of insurance supersedes any state regulation in the same area	
Part c: 0.25 point	
Sample 1 • The motivation for the model law was to permit state regulation to preempt the FTC act. *Sample 2* • Goal was to identify methods of unfair competition or unfair trade practices in state laws to reduce the amount of federal intervention.	