

Corporate COffee Break: More, More, More - Leasing in the Life Sciences Boom

Location

Webinar

Date & Time

Start Date: 09/29/2022
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 End Time: 12:30 p.m. ET

Unprecedented growth in the life sciences sector is driving demand for more lab and research space in metro areas across the country. To keep pace with the demand, there has been an increase in new dedicated life sciences development, as well as a surge in converting underperforming commercial and office real estate for use by life sciences companies. Understanding the nuances of life sciences leases as compared to traditional commercial leases is imperative for all parties involved.

Join Cozen O'Connor for a quick-paced discussion on:

- The current state of the life sciences real estate market
- The types of facilities that fall under life sciences and how they differ from an ordinary office
- Lease issues pertaining to unique infrastructure or services matters and environmental considerations
- Rethinking of common office lease provisions in a life sciences context, such as issues pertaining to use, surrender obligations (e.g., decommissioning), and assignment and sublet provisions

To view this webinar, click [here](#).

Transcript

Jeremy Garvey:

Good afternoon, everyone. My name is Jeremy Garvey. I'm a member of the

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Corporate Practice Group here at Cozen O'Connor in our Pittsburgh office. It's my pleasure to welcome everybody to the next installment of Cozen O'Connor's Corporate COffee Break. I am very excited to bring this latest installment to you. Today, we are going to focus on a very hot topic, leasing in the life sciences space, and we have two great guests. Just to give a little context, the unprecedented growth in the life sciences sector is driving demand for more lab and research space in metro areas across the country. To keep pace with this demand, there has been an increase in new dedicated life sciences developments as well as a surge in converting underperforming commercial and office real estate for use in life sciences. Understanding the nuances of the uniqueness of what a life sciences lease looks like compared to a traditional commercial lease is crucial, and again I've got two of our real estate practice group leaders here who know this space very well.

Jeremy Garvey:

But before I make those introductions, I just want to give a little overview of the series. The Cozen O'Connor COffee Break series was designed to present quick and consumable information on relevant corporate and transactional topics to folks on a current basis and in a way that is very consumable. For those of you who have joined us before, we try to provide valued expertise in the content using a quick-hitting Q&A format. Our goal in this half hour or so, and we try to keep it to that, is to give our listeners a view of the current state of the life sciences real estate market; the types of facilities that fall under life sciences and how they differ from sort of ordinary, traditional office leases; the lease issues that can present themselves that are unique to the infrastructure, service matters, or environmental matters that may come up, or others; and then rethinking the common office lease terms. Some of these are very unique in this context. Issues such as use surrender, assignment, and subletting.

Jeremy Garvey:

Before I begin our introductions of our speakers and then get to what you really want to hear, a couple of housekeeping things. You all, as listeners, should be in listen-only mode, so hopefully that means you can hear us, but we cannot hear you. We do have a Q&A chat pod which is in the platform and we do welcome questions. If you would like to send a question, please do. Type it into the chat pod and it will show up. Because we are pretty efficient

here, sometimes we have the ability to answer those on the webinar – sometimes we don't. If we don't, our goal is – and we will try to get back to you with a response via email or connect you up with either Adam or Matt.

Jeremy Garvey:

Now to the introduction of my two real estate partners to help us through this discussion today. First is Adam Silverman. Adam has represented a variety of regional and national developers, including several REITs, in a wide variety of matters. Adam has spent well over two decades in this space, has a great number of deals under his belt, very complex and extremely sophisticated real estate transaction matters. Adam is extraordinarily well credentialed, too many to go into here, but I would note that Adam is a Fellow at the American College of Real Estate Lawyers, which is the premier association of nationally known real estate attorneys in the country. Adam brings a deep understanding of the life sciences real estate space to us today.

Jeremy Garvey:

Also with us today is our partner Matthew Weinstein. Matt has extensive experience as well in the real estate space, representing developers and owners in all aspects of acquisitions, developments, financing, leasing, and disposition of commercial property. Like Adam, Matt's experience is 25 years plus, representing developers, owners, and others in some of the most sophisticated real estate transactions that there are. Matt is a frequent speaker and contributor on many topics in commercial real estate. He has written numerous articles in journals and real estate periodicals including *Developer Magazine*, *Medical Office Today*, *The Real Estate Finance Journal*, and the *Legal Intelligencer's* Real Estate Quarterly Supplement. Matt has handled innumerable life sciences leasing deals and has a wealth of deal experience and practical insights to add to our discussion today.

Jeremy Garvey:

So gentlemen, thank you very much. I appreciate you taking the time. I appreciate you joining us. And I think this topic is terrific given the volume of interest we have gotten. Let's get right to it. Matt, maybe kick it off to you. Help me and help folks on what we mean. I think folks generally understand life sciences, but in the real estate context, how is that viewed by you all?

Matt Weinstein:

Thank you, Jeremy, for framing the issues here and for that introduction. So life sciences. Let's talk about one piece of what it is not. Life sciences is not simply a subset of office leasing. It is not a warehouse and manufacturing lease, and it's not a typical healthcare hospital lease. It is really its own subset and own discipline in and of itself. So what does it include? There are really three areas in the broad band of life sciences. One is laboratory use. These are in many cases very hyperspecialized, both wet and dry laboratory uses. Certainly if anybody has been in a laboratory space, it is very different than the offices that you can see on the screen. Whether it is separate ventilation, HVAC systems, clean rooms, and procedures for actually doing work in those rooms that are very, very different than your typical office use and even your manufacturing and industrial use.

Matt Weinstein:

There is a research and development piece. This is a subset, certainly, of the lab space where there will be the research and development work that will be happening at that site. Then there is the CGMP, or GMP, or what I remember being called years ago as QA/QC, the quality assurance/quality control, that has now been codified into this good manufacturing practices – current good manufacturing practices – that is really a type of manufacturing that is codified at some level and regulated at some level that deals with how manufacturing can occur with certain pharmaceutical, food, and other products that are an additional check on the type of manufacturing that you have. So it is really those three categories – laboratory use, R&D, and the GMP – that are the whole of the life sciences practice.

Jeremy Garvey:

Matt, thanks. Adam, from your standpoint, obviously, it is not your typical, ordinary office lease. But how do life sciences office leases and issues – what are some of the things that are different? Maybe start on the infrastructure and services side.

Adam Silverman:

Sure. Well, obviously, a laboratory use differs from office use. I mean, for one thing, the materials that are being used can be hazardous. There are radioactive uses that can be made. And the machinery that gets used can require specialized infrastructure. They may be very heavy. They may require

reinforcing of the floor slab. They may require extra power requirements, ventilation requirements, HVAC requirements. Each lab will be different and each user will be somewhat different. Particularly where you have multi-tenant uses within a single building, you need to customize the space for the use that the user is going to make of it. And that can be different not just between lab space and say regular office space, but as between different laboratory spaces, depending on what the use is and what the requirements are.

Matt Weinstein:

And that is a very key difference. If you think of an office space, how easily office space is sublettable. If you are an investment bank, you can move around between those offices. How highly specialized some of these laboratory spaces are is really unique to those spaces.

Jeremy Garvey:

When you all approach those issues, how do you vet whether it will be HVAC, power, disposal, services of removal, weight capacity? I suspect there are places where the environmental tolerances for mold and other contaminants are low. You've talked about the machinery and the reinforcement of potential floors, and sound and vibration are things that we have seen too. How do you all vet that? In the typical office lease, those issues generally are not at foot. How do you vet that out and what are some of the things that you do to tease out what folks might not be thinking about, given your experience in this space?

Matt Weinstein:

I find there are two major issues that are very different and, I will say, subspecialties that have to get involved when you are dealing with life sciences uses as opposed to general office use. In the general office use – I will make this a little simpler than it needs to be. If there is an environmental provision in a general office lease, it says you will have to comply with the environmental regulations, and the only thing you can have at the site is cleaning products. That is pretty much the sum total of what you might have there. And then the same also holds true through the landlord work or the tenant work that is being done at the site in the build-out process. And it will be relatively general terms. Obviously, there is some specificity, but you are going to tie into existing systems in a building, and many times – I don't want

to say that lawyers aren't necessarily looking at that work letter – but we are sort of glancing at it a little bit more than looking in depth at the work letter.

Matt Weinstein:

In a life sciences context, you need to have environmental lawyers very much a part – environmental consultants – very much a part of the work that is being done. They need to understand what type of chemicals are being used, and that is an issue also going forward that you have with the tenant. And you need to understand what is being built. Are there going to be vibrations that are going to be caused by this particular use? You need to understand that and put a provision that addresses issues of vibration in the lease. What happens if those vibrations become so problematic that they will create problems with scales and other calibrations in other floors? How is it going to be designed? And you have to look much more closely at those work letters and much more closely at the environmental factors, and get those specialists involved much more early on than you would in a traditional office lease where, again, you could get away with saying “just comply with law and make sure you don't put anything but cleaning products in your premises.”

Adam Silverman:

It also depends, if I may jump in on that, on what kind of project it is. If you are talking about new construction for a single-tenant use, a build-to-suit for a single tenant, the building will be designed for that particular use. If you are talking about an existing building, and particularly multi-tenant buildings, then having the build-out set forth in the work letter specify what exactly the specifications are going to be and then how they interact with other users in the building. If there is additional HVAC that a particular user needs, how is that addressed? If there are additional power needs, how is that addressed? It is probably simpler in the context of a single-tenant build-to-suit context because everything is on the tenant. The tenant will operate the building, effectively, themselves. It gets a lot more complicated when you have existing buildings and when you have multiple tenants in a building.

Jeremy Garvey:

You all touched on this a little bit, but on the environmental side, and obviously it will range depending on what the application is and who the tenant is and what the use of the space is, but clearly different than a normal

office or office commercial space, you have got issues of hazardous waste removal, you've got biohazards, you've got radioactive materials potentially, you've got things that are potential contaminants that others would not want to come in contact with. And on the tenant side, you've obviously got some issues where you are trying to control the environment. How do those issues come to play and how are those dealt with differently than, as you said, Matt, there is a pretty standard "thou shall not do anything that is not authorized by law, and you can clean the space," but that's it. Are you bringing in expertise on the environmental side? How is that actually working when you are working through these lease provisions and some of the issues?

Matt Weinstein:

Certainly there is front-end work that is being done on the environmental side to understand what type of chemicals, what type of output might happen from a specific premise. And it is not just chemicals that we are taking about. Many of the new buildings that are built are specifically building vivarium space, which is space for animals. You may not be able to have a floor that can withstand having animals. And you have to understand that there is, not necessarily chemicals, but there are biological issues with respect to having animals there, and there is a certain type of space and certain type of build-out that might not be able to be retrofitted or makes more sense to build at the front end. Again, getting environmental folks involved and understand what is going to be done on the front end, what chemicals are going to be used on the front end, what type of biohazards are going to be used at the front end.

Matt Weinstein:

But there is also a check that needs to be done and, again, incorporated into these leases for the back end. So on a periodic basis, whether it is daily, weekly, monthly, annually. There needs to be an understanding and a requirement for reporting that you otherwise wouldn't have in a normal office lease, where the only deliveries you are going to have are paper and ink. You need to understand, especially as companies evolve, and the type of work that they do at the properties evolves, so you can understand what those chemicals are and what those biohazards are, and maybe even animals that are at the premises. It might affect, which is something that you are not thinking about in an office lease, your insurance coverage. Does your insurance exclude out the presence of certain chemicals at the property? Is

that an insurable risk that you as the owner of the building should take? Or is that a risk that your tenant needs to take? And if that chemical changes over time, do we need to have provisions in the lease that might be much more robust than you would have in a normal lease? Where the tenant will be required to change the type of insurance they have, add the type of insurance they have, increase the type of insurance they have, based on the nature and change of their business. Whereas you have a much more static use in an office space than what you have in a life science-type context.

Jeremy Garvey:

With vivariums, do you ever run into the need for separate means of ingress and egress, and elevators, and the like? Presumably there has got to be ways to get things in and out of the office, either the building or the retrofitted building, that probably are not accessible by the rest of the tenants? Or is that not an issue you face?

Adam Silverman:

I have seen instances where there are separate set aside elevator service just for vivarium use. If you think about it, it makes sense. If you are sharing space with ordinary office users, you probably don't want to be on an elevator with animals that are being used for experimentation. So where it's possible that certainly is a preferred way to proceed. Other than that, you probably want to have some pretty robust protocols in effect for how the elevators get shared, when and how animals can be moved back and forth, as needed.

Matt Weinstein:

I have seen twice where we have actually had to institute in vivariums, as well – it goes to this access issue – a labor harmony-type provision, where you will see in many leases in offices, where you can't use nonunion labor. But you have the same issues with vivarium-type uses. Whether it's PETA or other organizations that have issues with respect to that type of work. If you are in a multi-tenant building, specifically a multi-tenant building that might be regular office, folks that are in the other portion of the building don't necessarily want to see people protesting out in front of the building. Very similar to what you see in retail context where you can't have political-type use. You don't want protests and other types of demonstrations out in front of the building.

Jeremy Garvey:

Makes total sense. Matt, and maybe Adam, you can take this one. Matt, you spoke a little bit about the QA/QC, about the current good manufacturing practice implications and the overlay on regulation. How do those things impact the space as you look at it? Maybe in a related matter, how are things like HIPAA – you sort of talk about access, if you will, and presumably there are times when the access needs to be circumscribed because regulations are at play. How do those things come into play as you look at these spaces?

Adam Silverman:

One place it shows up is in zoning. For example, here in Philadelphia, a lot of the zoning uses that are permitted where these projects are being built do not include manufacturing. So you have to be careful about what the tenant is doing, how you structure the use clause. Obviously, the tenant has to comply with zoning laws. Do you need a variance? You need to think about it carefully. Because if you are doing this GMP work, can it be characterized as manufacturing? Yeah, maybe. So that is one place where you need to be careful.

Adam Silverman:

If the tenant is providing what may be medical services, so for example, we have tenants that are providing treatments for cancer or what have you, they may be subject to HIPAA, which impacts the landlord because unlike in an ordinary office lease where you have a provision that says the landlord can come into the space pretty much whenever they want on 24-hours notice, that may not be possible in some of these spaces. They may be subject to privacy concerns. They may require having somebody from the tenant present with you while you are in the space. And the other thing is that a lot of these tenants, particularly startups, are very sensitive to their intellectual property. And they don't want the landlord or anybody else nosing around their premises without supervision. So these access clauses that are pretty boilerplate in a lot of office leases, actually become pretty heavily negotiated in some of these kinds of leases.

Jeremy Garvey:

Maybe moving to more granular, some of the lease issues that you see in particular. I guess one topic that we have discussed and that comes up, that you have alluded to, is how do you define the permitted use? Typically, if it is

an office lease, probably not that heavily negotiated. But how do you all view that in this context and is that something that is heavily looked at and negotiated?

Matt Weinstein:

That is an interesting issue that has come up a bit more. In an office context, very seldom do you see the concept of prohibited uses and exclusive uses. What we are seeing a lot in the life sciences space is a number of tenants that are asking for exclusive uses. They want to be the only place that does work with gene therapy. They want to have a monopoly in a building and, many times, in an area. Especially where there are campuses that show as university research parks all over the country and have common ownerships. Certainly here in West Philadelphia, where Adam and I are. We have it up in Boston. You have it in Cambridge. You have it out in Silicon Valley, St. Louis, down in Miami.

Matt Weinstein:

There are areas where there are large research parks, and in those research parks there are tenants that are wanting to corner the market a little bit more and are asking for exclusive uses, and for other tenants to not be able to have certain uses at those sites, which is very different than your typical office use, and something, frankly, that I had only seen in the retail context for many years. But it is really a trap for the landlords. They say, "Oh, yeah. We're only going to have one type of this use at this time." But you have to project yourself five, ten years into the future and if you provide a very broad exclusive, you could set yourself up for not being able to be a magnet for other types of similar industries that would be able to move into your buildings, move into your campuses, and it does create some problems.

Jeremy Garvey:

What about the tenant wanting to provide typically services – whether it's maintenance or janitorial or whatever – that may traditionally have been provided by the landlord? Is that something you see, and how do you all view that?

Adam Silverman:

Particularly janitorial is an interesting one. Because, unlike the typical office setup where the landlord provides janitorial to the office space, again,

cleaning a wet lab space requires expertise. And the tenant probably wants to control that. And in most of the leases that I have seen, the tenant is the one that selects the janitorial service provider, at least for the lab space. So you may have a bifurcation, where the landlord is providing janitorial to the common areas and the office portions of the space, but the tenant hires a different contractor to handle the janitorial within the lab space. And then again, if you have a multi-tenant building, you might have multiple tenants hiring different contractors. So you wind up with this hodgepodge of different janitorial contractors cleaning different parts of the building and different spaces within a tenant's premises. It can get complicated and it can get messy to keep everything straight and keep everybody scheduled.

Adam Silverman:

Repairs and service to the premises itself. Again, you've got specialized equipment, specialized facilities. It is much more common for a tenant to want to undertake more of that themselves. Specialized air conditioning is pretty common in a lot of these spaces. So it may have to be the tenant that hires the HVAC contractor to work on the HVAC serving their space. It's a lot more specialized and typically it is the tenant with the expertise to handle those services rather than the landlord. In the instances that I have seen, the landlord is usually willing to do that. But it becomes a logistics issue.

Matt Weinstein:

On the repair and maintenance issue, certainly the landlords are much more flexible on understanding that tenants are going to need their own repair and maintenance folks and replacement folks because of the specialized equipment. The janitorial, there has been a little bit of push back among landlords simply because they just don't want the day-to-day hodgepodge that you have on the janitorial, which is not done on an as-needed basis but on a regular basis. And it is not that they are necessarily requiring the tenants to use a certain contractor, but they might have a list of approved janitorial folks so they can try to have the same janitorial company to be the janitorial company for a specific building rather than having 15 floors and 15 different janitorial companies.

Jeremy Garvey:

What about TI improvements and the issues there? Obviously, generally speaking, a number of the life sciences folks tend to want to be in clusters.

That is pretty typical around the country. But I have to imagine even given that, that you've got a whole host of unique tenant improvement issues, and timing, and sequencing, and expertise involved that is a whole lot different from your normal lease.

Adam Silverman:

One of the things that I am seeing a lot of in these leases is the fact that tenants want to get in absolutely as early as possible to start their TI, well before substantial completion. I am thinking in terms of new construction. But the moment the building is weather-tight, they want to get in and start doing their TI. In a lot of these cases the amount of TI that the tenants are putting in per square foot is higher than the base building cost. So it may be \$250 a foot to build the building, and the tenants are putting in \$350 a foot in TI. We were negotiating one of these leases and we mentioned this early access language, and I asked the tenant, "What is driving this? Why do you want to get in there so early to do this work?" And he looked me in the eye, and he said, "So we can start saving lives." Put me in my place pretty quick. Of course, the work they are doing is very technical and typically takes a good amount of time to complete their work as well. So even though they are starting early, they may not actually be in and functioning for some time after the building is complete.

Jeremy Garvey:

We've got a couple of minutes so to the extent we have questions, we will kind of push those out. I am interested in a couple of topics, maybe we will hit two. One – decommissioning. At the end, Matt, there has got to be issues there. After decommissioning, maybe you all can talk about what the issues are, what unique issues are around assignment and subletting. Then we will wrap this up. Matt, on decommissioning, what are the unique issues you see there? Obviously there are some but what have you all experienced?

Matt Weinstein:

Lab space is very different than office. This is one of the key differences. How you leave an office space, which is many times simply broom clean so that somebody else can move into it, is not how you are going to leave lab space. There are chemicals. There are biological agents. There are animals if there is a vivarium. You can't leave dead rat cadavers and chemicals in a sink and say I swept the floors. That just doesn't work. There is a series,

relatively complicated provisions, that we put into leases that deal with the types of exit surveys and decommissioning and other items that you need to do when you leave the property. And it is something that we will put into the lease on the front end.

Matt Weinstein:

It is also something that we need to highlight for clients on the back end to make sure that what the lawyers spent quite a bit of time at the beginning making sure was put into the lease, those two or three pages of decommissioning requirements are actually followed through at the end. Because it is a tremendous amount of liability for a landlord if that decommissioning work hasn't happened and there are biological agents, there are chemicals, there are animals, cadavers, whatever it may be that have not been disposed of properly. It is much more difficult to deal with those issues on the back end as a landlord than the tenant handling those.

Jeremy Garvey:

Adam, what about the assignment and subletting? This is a provision that does get some visibility on typical leases in my experience. What are some of the unique issues here?

Adam Silverman:

I don't know that it is all that much different than in standard office leasing. Given who a lot of these tenants are, you want to be careful. A lot of these tenants are startups. Some of them are sitting on enormous amounts of cash. Some of them aren't. You want to make sure that whoever is taking over the space, obviously, is going to provide the landlord with creditworthiness that it bargained for in the original lease. And is also able to use the space in a way that comports with the use provisions in the lease, and zoning, and everything else. Matt, I don't know if you have any other experience. I don't know that it is all that substantively different.

Matt Weinstein:

It is not that much different but there is just a heightened concern of who that subsequent tenant is. Especially, going back to one of your earlier comments of what is being done in the premise. What chemicals are there? It is very different than having uranium in the site then necessarily having some beakers with a little bit of ammonia.

Jeremy Garvey:

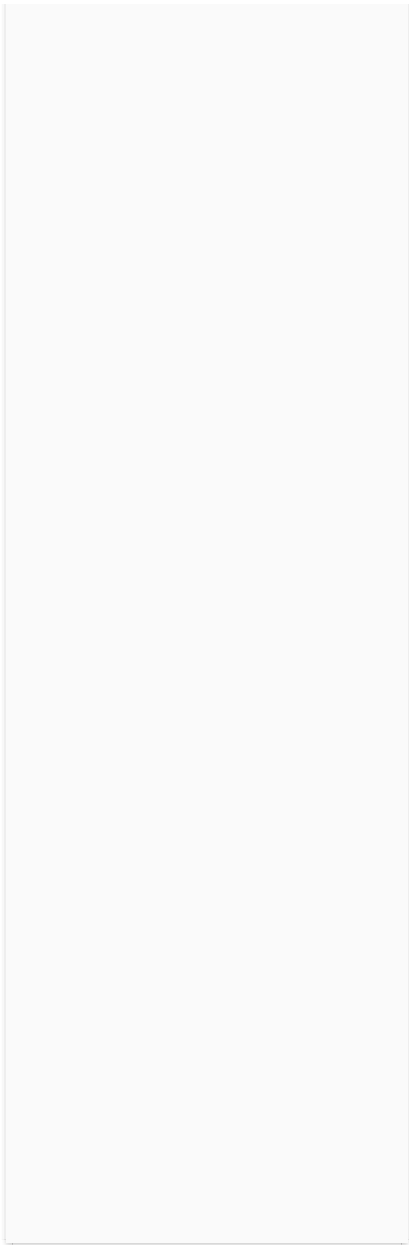
Great. We did have one question. I will save it and kick it out to you guys, and we can connect with you given that we are two minutes over and I promised both Adam and Matt that this would be painless and I would keep it to a half an hour. Everyone, thank you for joining us for this latest segment on leasing in life sciences. As always, I want to thank Matt and Adam. They have been great sports. They clearly are the folks who we look to, and I think across the country, are folks that people across the country are looking to with this expertise because it is unique and I think from their deal flow and their experience. You have to know this space to really be valuable, and they do. And they are part of a great real estate group here at Cozen.

Jeremy Garvey:

Again, we really appreciate folks attending. There will be a survey at the end. If you wouldn't mind, if you could just pop through that. If you do have questions, and we do have a handful in the chat pod, we will kick those out and get those answered and back to you. With that, Matt and Adam, thank you very much, and we appreciate everybody attending today and look forward to hopefully folks joining us in the next segment, which should be up in a couple of months.

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