

## **The Power Of Reciprocation In Mediation**

**By Bradley Bostick**

As a general rule, before a case can settle, the parties must enter into a settlement range where the demand and offer are reasonably supportable in light of the facts and probable outcomes at trial. The parties almost always start the negotiation far outside of this range. This is where most of the posturing takes place. Unfortunately, getting past "ridiculous" demands and "insulting" offers has become a standard part of the process in most cases and premature "cutting to the chase" strategies are usually ill advised. Thus, one should prepare to make several moves to get into the settlement range. Reciprocation is a powerful driver in getting the other side to give up something. Hence, often the bigger the move, the easier it is to justify a bigger countermove because an implied sense of obligation is created. Sometimes a big move is accompanied with the message that the party really didn't want to make such a significant move but the mediator prevailed upon them to do so by assuring the party that the other side would make a "good faith" response that was more generous than it otherwise would have been. Even though a significant countermove was not made as an explicit condition in advance, the usual response is almost always substantive, driven by our deeply embedded and largely unconscious reciprocation response. For those interested a better understanding of this powerful force as well as other ways that people are motivated to act, I strongly recommend the book *Influence: The Psychology of Persuasion* by Robert Cialdini.