PALMER, J., dissenting. I disagree with the majority's conclusion that the plaintiff, Claudia Weiss, is barred by the doctrine of res judicata from litigating her claim in the present case because she "could have" litigated the meaning of the term "personal injury cases," which is contained in the parties' marital dissolution agreement, in the parties' prior dissolution action but failed to do so. In so concluding, the majority misapplies the doctrine of res judicata and, as a result, reaches a result that is both contrary to settled law and manifestly unfair to the plaintiff. It also is quite clear that the doctrine of collateral estoppel does not bar the plaintiff from proceeding with her claim in the present action. I therefore would reverse the trial court's decision to grant summary judgment in favor of the defendant, Martin T. Weiss.

" 'Claim preclusion (res judicata) and issue preclusion (collateral estoppel) have been described as related ideas on a continuum. [C]laim preclusion prevents a litigant from reasserting a claim that has already been decided on the merits. . . . [I]ssue preclusion . . . prevents a party from relitigating an issue that has been determined in a prior suit.' " *Rocco* v. *Garrison*, 268 Conn. 541, 554, 848 A.2d 352 (2004). " 'Both doctrines protect the finality of judicial determinations, conserve the time of the court, and prevent wasteful relitigation . . . and express no more than the fundamental principle that once a matter has been fully and fairly litigated, and finally decided, it comes to rest.' " Id. " 'Res judicata, or claim preclusion, is [however] distinguishable from collateral estoppel, or issue preclusion. Under the doctrine of res judicata, a final judgment, when rendered on the merits, is an absolute bar to a subsequent action . . . between the same parties or those in privity with them, upon the same claim. . . . In contrast, collateral estoppel precludes a party from relitigating issues and facts actually and necessarily determined in an earlier proceeding between the same parties or those in privity with them upon a different claim.' " Id., 554–55. " 'An issue is actually litigated if it is properly raised in the pleadings or otherwise, submitted for determination, and in fact determined. . . . If an issue has been determined, but the judgment is not dependent [on] the determination of the issue, the parties may relitigate the issue in a subsequent action.' " Id., 555. " 'To assert successfully the doctrine of issue preclusion, therefore, a party must establish that the issue sought to be foreclosed actually was litigated and determined in the prior action between the parties or their privies, and that the determination was essential to the decision in the prior case.' " Id.

It appears that the trial court, *Booth*, *J.*,[1] granted the

defendant's motion for summary judgment in reliance on the doctrines of res judicata and collateral estoppel. With respect to the applicability of the doctrine of res judicata, the trial court explained in relevant part that the "dissolution judgment [of the court, *Scholl*, *J.*] reviews the [dissolution] agreement thoroughly, and in particular, addresses specific terms used therein. The final judgment, combined with the . . . oral decision on the defendant's motion for clarification, makes clear that the matter of the meaning of [the language at issue, namely, 'personal injury cases,' in] the [dissolution] agreement *has been decided*. To allow the plaintiff's current claims to proceed would undermine the primary purposes of the doctrine of res judicata: promotion of judicial economy, prevention of inconsistent judgments and promotion of finality of judgments." (Emphasis added.) With respect to the applicability of the doctrine of collateral estoppel, the trial court observed that "[t]he issue involved in the plaintiff's present action is the meaning of ['personal injury cases' in] the [dissolution] agreement. In both the dissolution judgment and the subsequent order of clarification, the court *decided this issue*. Therefore, the plaintiff's present action is barred by the doctrine of collateral estoppel." (Emphasis added.)

The trial court's rationale for applying each of the two doctrines is the same: the meaning of the term "personal injury cases" was *actually litigated and decided* in the dissolution action, including the litigation of the defendant's motion for clarification. Thus, with respect to the trial court's application of the doctrine of res judicata, the court applied that prong of the test pursuant to which a claim will be barred if that claim actually has been raised and decided in a prior action.

By contrast, the majority decides the case under the prong of the res judicata test pursuant to which preclusive effect is given to claims that "could have" been raised in a prior action because they arose out of the same transaction as the prior action. Specifically, the majority states that, "[i]n the present dissolution action, the plaintiff . . . had *sufficient opportunity* to litigate the definition of . . . the terms in the [dissolution] agreement . . . ." (Emphasis added.) The majority relies on this prong of the test presumably because, as the majority acknowledges, "the specific issue in the present case *was not* considered by the court during the trial on the plaintiff's dissolution . . . action . . . ." (Emphasis added.) For the reasons that follow, I do not agree with the conclusion of either the majority, to which I turn first, or the trial court.

Before addressing the majority opinion, I note that several additional principles underlying the doctrine of res judicata—the doctrine on which the majority's decision is predicated—are relevant to my analysis. "[This court has] adopted a transactional test as a guide

to determining whether an action involves the same claim as an earlier action so as to trigger operation of the doctrine of res judicata. [T]he claim [that is] extinguished [by the judgment in the first action] includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose. What factual grouping constitutes a transaction, and what groupings constitute a series, are to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations or business understanding or usage. . . . In applying the transactional test, [the court] compare[s] the complaint in the second action with the pleadings and the judgment in the earlier action [to determine whether the claims in the second action arose out of the same transaction as the earlier action and, therefore, should have been brought in that earlier action]." (Citations omitted; internal quotation marks omitted.) *Commissioner of Environmental Protection* v. *Connecticut Building Wrecking Co.*, 227 Conn. 175, 189–90, 629 A.2d 1116 (1993). It is well established that "[m]aterial operative facts occurring *after* the decision of an action with respect to the same subject matter may in themselves, or taken in conjunction with the antecedent facts, comprise a transaction which may be made the basis of a second action not precluded by the first." (Emphasis added; internal quotation marks omitted.) *Marone* v. *Waterbury*, 244 Conn. 1, 15 n.14, 707 A.2d 725 (1998); see also *Zwerg* v. *Zwerg*, 254 Miss. 8, 19, 179 So. 2d 821 (1965) ("[t]he estoppel of a judgment extends only to the facts and conditions as they were at the time the judgment was rendered, and to the legal rights and relations of the parties as fixed by the facts so determined; and when new facts or conditions intervene before the second suit, furnishing a new basis for the claims and defenses of the parties respectively, [the] issues are no longer the same, and hence the former judgment cannot be pleaded in bar in the subsequent action" [internal quotation marks omitted]); *Creech* v. *Addington*, 281 S.W.3d 363, 381 (Tenn. 2009) ("[t]he doctrine of res judicata extends only to the facts in issue as they existed at the time the judgment was rendered, and does not prevent a re-examination of the same question between the same parties [when] in the interval the facts have changed or new facts have occurred which may alter the legal rights or relations of the litigants" [internal quotation marks omitted]). "It [also] is well established that the party asserting the affirmative defense of res judicata bears the burden of establishing its applicability." *Commissioner of Environmental Protection* v. *Connecticut Building Wrecking Co.*, supra, 195.

Applying the foregoing principles to the present case, I conclude that it is readily apparent that the plaintiff's complaint in the present action alleges a cause of action different from that alleged in the dissolution action because the former is predicated on facts that arose *after judgment had been rendered in the dissolution action*, namely, the defendant's alleged breach of the parties' dissolution agreement on the basis of the defendant's failure to pay sums allegedly due thereunder. In an affidavit filed in opposition to the defendant's motion for summary judgment, the plaintiff attests to the fact that, at the time of the dissolution action, she believed that the term " 'personal injury cases' . . . would necessarily encompass workers' compensation cases." She further stated that, "more than one year after the [dissolution] judgment entered, [she] learned that the [d]efendant had approximately [ninety] workers' compensation cases active as of November [of] 1999 that were not included in the [d]efendant's list of active files for which [she] was to be paid a one third portion of the net fees . . . ." She also stated that, "[d]espite demand on him to do so, the [d]efendant has consistently refused to pay . . . one third of the fees . . . ."[2] The reason that the doctrine of res judicata does not bar the plaintiff's claim is because the plaintiff's complaint alleges a breach of contract predicated on facts and circumstances that either were unknown to the plaintiff at the time of the dissolution action or that arose after judgment had been rendered in that action. See, e.g., *Morrison* v. *Morrison*, 284 Ga. 112, 116, 663 S.E.2d 714 (2008) ("[when] . . . some of the operative facts necessary to the causes of action are different in the two cases, the later [action] is not upon the same cause as the former . . . although the subject matter may be the same . . . and even though the causes arose out of the same transaction" [internal quotation marks omitted]); *Stone* v. *Stone*, 295 Ga. App. 783, 785–86, 673 S.E.2d 283 (2009) ("[When] a settlement agreement is incorporated into a final decree of divorce, [an action] seeking damages for the violation of its terms . . . may be maintained . . . [because the] breach allegation was not—and could not have been—adjudicated in the divorce proceeding, which *concluded* when the parties settled the case and the trial court incorporated that settlement into the final divorce decree. The trial court, therefore, erred in dismissing the [contract action] as res judicata." [Emphasis in original; internal quotation marks omitted.]), cert. denied, Docket No. S09C0852, 2009 Ga. LEXIS 263 (Ga. April 28, 2009); *Wilbanks* v. *Dolberry*, 177 Ga. App. 644, 644–45, 340 S.E.2d 275 (1986) (doctrine of res judicata did not bar former husband's action for breach of settlement agreement arising from divorce); *Brouillette* v. *Brouillette*, 18 So. 3d 756, 758–59 (La. App. 2009) (action for breach of settlement agreement not barred by doctrine of res judicata because issue of former husband's failure to comply

with terms of agreement obviously was not subject of divorce proceeding).

Put differently, it reasonably cannot be stated that the plaintiff "could have" litigated the meaning of the term "personal injury cases" in the dissolution action itself because, as the plaintiff stated in her affidavit, she believed that that term included workers' compensation cases, and *she had no reason to believe that the defendant had a different understanding of the meaning of that term*. Thus, although the plaintiff *theoretically* could have litigated the matter in the dissolution action, she had no reason to do so because she neither knew nor should have known that the meaning of the term "personal injury cases" was a matter in dispute until she was apprised of that fact when the defendant refused to pay her a percentage of the fees that he had earned from his workers' compensation cases. It is well established that a party is permitted to bring a subsequent action arising out of the same transaction as a prior action when, as in the present case, the party alleges that she was unaware, at the time of the prior action, of the facts giving rise to the subsequent action. See, e.g., *Jackson* v. *R. G. Whipple, Inc.*, 225 Conn. 705, 717, 627 A.2d 324 (1993) ("[t]he . . . requirement that an issue be 'actually litigated' embodies the important concern *that the parties be cognizant of and interested in an issue before they are precluded from litigating it*" [emphasis added]); *Sotavento Corp.* v. *Coastal Pallet Corp.*, 102 Conn. App. 828, 836–37, 927 A.2d 351 (2007) (declining to apply doctrine of res judicata when plaintiff was unaware, during pendency of first action, of facts giving rise to second action).[3] This is true even when the facts giving rise to the second action were discoverable by the party at the time of the first action but were unknown to that party. See *Sotavento Corp.* v. *Coastal Pallet Corp.*, supra, 837 and n.4; see also, e.g., *Creech* v. *Addington*, supra, 281 S.W.3d 381 ("[t]he doctrine of res judicata extends only to the facts in issue as they existed [and were known to the parties] at the time the judgment was rendered, and does not prevent a re-examination of the same question between the same parties [when] in the interval the facts have changed or new facts have occurred which may alter the legal rights or relations of the litigants" [internal quotation marks omitted]).

The flaw in the majority's analysis is reflected in the following language in its opinion: "Although . . . the specific issue in the present case was not considered by the court during the trial on the plaintiff's dissolution . . . action, nothing in the nature of that proceeding prevented the plaintiff from litigating the meaning of personal injury cases. In other words, the plaintiff was not deprived of the *opportunity* to litigate her claim." (Emphasis in original.) The majority misses the point entirely in asserting that there was nothing that "prevented the plaintiff from litigating the meaning of" the

term "personal injury cases" because the issue is not whether she had been *prevented* from litigating that issue but, rather, whether she *had any reason or incentive to litigate it*. Because the plaintiff did not know, and had no reason to know, that, at the time of the dissolution judgment, the defendant had a different understanding of the meaning of the term "personal injury cases," namely, that the term did not include workers' compensation cases, the plaintiff had no reason to litigate that issue until she learned, more than one year later, of the defendant's different view of the term's meaning. For precisely the same reason, the majority's assertion that the plaintiff was "not deprived of the opportunity to litigate" the meaning of "personal injury cases" also is beside the point. The plaintiff had no "opportunity" to litigate the issue for res judicata purposes because she had no reason to know that she and the defendant disagreed over the meaning of the term, and, therefore, the plaintiff had no cause to litigate the term's meaning in the dissolution action. Simply stated, in concluding that the plaintiff is barred in the present action from litigating the issue of whether the term "personal injury cases" includes workers' compensation cases, the majority penalizes the plaintiff for not being clairvoyant, that is, for not knowing, at the time of the dissolution action, that the defendant had an understanding of the term that was different from the plaintiff's understanding of that term. The majority's unprecedented approach works a serious and manifest injustice on the plaintiff, who now is barred from litigating a claim that she never before raised because she had no reason to do so.

The majority nevertheless asserts that, "[i]n [its] view . . . the plaintiff's allegation that she discovered that she and the defendant had different definitions of the phrase 'personal injury cases' after the dissolution proceeding simply does not constitute a material operative fact that would create a new transaction for the purposes of res judicata. . . . All of the relevant facts had occurred or were known or easily discoverable to the plaintiff at the time of the dissolution hearing." (Citation omitted.) Footnote 13 of the majority opinion. The majority, however, provides no explanation as to *why*, in its view, the fact that the plaintiff did not discover that she and the defendant had a different understanding of the term "personal injury cases" until after the dissolution proceeding is *not* material for res judicata purposes. Contrary to the majority's bald assertion, that fact, which the defendant does not challenge, is *highly material* to the issue presented because, in light of that fact, the plaintiff had absolutely no reason to litigate the meaning of the term "personal injury cases" in the dissolution action. The majority also fails to explain why the plaintiff should have known or discovered that she and the defendant had a disagreement over the meaning of the term "personal injury cases" prior to

the dissolution judgment. Again, the majority's conclusion is unsupported by any explanation. I submit that the majority declines to provide an explanation for its conclusion because there is no such explanation. In other words, there is nothing in the record, or anywhere else, to substantiate the majority's conclusion that the plaintiff was required to litigate the issue of the meaning of the term "personal injury cases" in the dissolution action, or otherwise to be barred from doing so thereafter, even though she had no knowledge or reason to know of the existence of any dispute concerning the meaning of that term at the time of the dissolution action.[4]

The majority attempts to satisfy the requirements of the transactional test for res judicata by asserting that the plaintiff, in fact, was aware of the operative facts giving rise to her breach of contract claim at the time of the dissolution action. Specifically, the majority states that the plaintiff "was on notice of any of the facts that would underlie her claim of ambiguity." The majority's support for this assertion, however, is wholly unpersuasive. Indeed, the defendant himself, who has the burden of proof on the issue, does not make the argument that the majority makes, *or any other argument* for that matter, with respect to whether the plaintiff was aware, at the time of the dissolution action, of the facts underlying her breach of contract claim.[5] Specifically, the majority relies on the fact that "[t]he defendant had provided the plaintiff with a list of active personal injury cases as of November, 1999, as well as copies of the law firm's account statements from August to December, 1999." This list of cases, according to the majority, should have alerted the plaintiff to the fact that the defendant did not possess the same understanding of the phrase "personal injury cases" because the list contained no workers' compensation cases. An examination of the list, however, reveals sixty-nine "pending," "in suit," or "settled" cases identified by name only, not by docket number.[6] The majority does not explain how this list of cases would have put the plaintiff on notice of the fact that the workers' compensation cases were *not* included among them. Indeed, it is the plaintiff's contention that she understood the list to be *inclusive* of the workers' compensation cases. There is absolutely nothing about the list that would have alerted her otherwise. To the contrary, many of the defendants on the list are businesses that employ workers, a fact that reasonably would have led the plaintiff to believe that the list comported with her understanding of the parties' dissolution agreement. The majority's contention, therefore, that the list provided the plaintiff with notice of the facts underlying her breach of contract claim is entirely without merit. Even less persuasive is the majority's contention that the law firm's bank account statements from August through December, 1999, provided the plaintiff with

notice that she and the defendant possessed different understandings of the phrase "personal injury cases" such that the plaintiff was required to raise that issue during the dissolution proceeding. The majority does not explain how those statements, which presumably reflect cash deposits, withdrawals and account balances, provided notice to the plaintiff of the ambiguity in the parties' dissolution agreement. Because the list of cases and account statements are the only evidence on which the majority relies in reaching its conclusion, it is impossible to see how the majority rationally can conclude that the defendant has met his burden of establishing that the doctrine of res judicata bars the present action.

The majority also argues that, during the dissolution proceeding, "[t]he plaintiff actually litigated [the meaning of] several terms [in] the [dissolution] agreement . . . ."[7] The majority contends, therefore, that "[t]he plaintiff certainly had the opportunity to litigate the parameters of the phrase 'personal injury cases' during the [dissolution] trial . . . if she chose to do so, but instead she acknowledged that the agreement, in other respects, was not ambiguous." Under the prong of the doctrine of res judicata that the majority purports to apply, however, the fact that a party has had an opportunity to litigate a claim in a prior action is not dispositive; the issue is whether the plaintiff was "*cognizant of*" that claim in the prior action. (Emphasis added.) *Jackson* v. *R. G. Whipple, Inc.*, supra, 225 Conn. 717. The doctrine of res judicata is not properly applied to penalize a party for failing to bring a claim involving a dispute of which that party was unaware, regardless of whether the earlier action would have provided an opportunity to bring that claim.

Indeed, under the majority's analysis, the plaintiff was required to anticipate potential but unknown ambiguities in the dissolution agreement, or to perceive that the defendant possessed a different understanding of that agreement, simply because the plaintiff litigated the meaning of three of the terms in the agreement. The majority cites to no authority, however, and I have found none, to support the proposition that a party to an agreement, entered into in the course of a dissolution action, is required to litigate the meaning of every term of the agreement before judgment is rendered in that action in order to avoid being precluded from doing so at a later date when that party learns that the other party has violated a term of the agreement. Indeed, motions for clarification are permitted precisely because of the fact that the parties to such an agreement may interpret it differently in light of future events. Furthermore, parties to a dissolution action routinely bring motions for contempt, often filed years after the dissolution judgment has been rendered, claiming that the other party has violated the terms of the judgment by failing to turn over property or money allegedly due

thereunder.[8] For all the foregoing reasons, I disagree with the majority that the doctrine of res judicata bars the present action because, contrary to the determination of the majority, it is unreasonable to conclude that the plaintiff was required to assert her claim during the dissolution action.[9]

I turn next to the issue of whether the trial court properly determined that the present action was barred by the doctrine of collateral estoppel because the meaning of the term "personal injury cases" was fully and fairly litigated in the hearing on the defendant's motion for clarification. The plaintiff claims that the trial court's determination was improper because, among other reasons, she did not have a right to seek appellate review of the ruling on the motion for clarification. Although the majority does not directly address this claim, it acknowledges its validity in a footnote. See footnote 20 of the majority opinion ("we have held that unless the unsuccessful party in the prior litigation had the opportunity to seek appellate review, that issue has not been 'fully litigated' for the purposes of collateral estoppel").

The plaintiff's claim has merit because, for collateral estoppel to apply, "there must have been available some avenue for review of the prior ruling on the issue."[10] *Sena* v. *Commonwealth*, 417 Mass. 250, 260, 629 N.E.2d 986 (1994); accord *Commissioner of Motor Vehicles* v. *DeMilo & Co.*, 233 Conn. 254, 269, 659 A.2d 148 (1995); see also *Water Pollution Control Authority* v. *Keeney*, 234 Conn. 488, 494–95, 662 A.2d 124 (1995) ("relitigation of the issue in a subsequent action between the parties is not precluded [when the] party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action" [internal quotation marks omitted]); *Commissioner of Motor Vehicles* v. *DeMilo & Co.*, supra, 269 ("it would be inequitable to impose on a party the adverse [preclusive] effects of a . . . judgment when that party was denied the opportunity for appellate review"). There is no right of appeal from the ruling on a motion for clarification because that ruling is not deemed to be a final judgment. Cf. *In re Haley B.*, 262 Conn. 406, 412, 815 A.2d 113 (2003) ("motions for clarification or an articulation, as opposed to alteration, of the terms of [a] judgment or decision do not give rise to a new appeal period"). Indeed, in the present case, the defendant opposed the plaintiff's appeal from the ruling on the defendant's motion for clarification, and the Appellate Court dismissed that appeal, presumably because it was not filed until long after the twenty day appeal period—which began to run on the date that the dissolution judgment was rendered—had expired.

Finally, I also disagree with the trial court's conclusion that, because the plaintiff's claim has been actually litigated and decided, principles of res judicata bar the

plaintiff from pursuing the present action. This prong of the doctrine of res judicata is inapplicable for the same basic reasons that the doctrine of collateral estoppel does not bar this action. In particular, it cannot be said that the meaning of the term "personal injury cases" was litigated in the dissolution action because, although that action gave rise to an appealable final judgment, as I explained previously, the plaintiff was unaware of any controversy concerning the meaning of that term, and, therefore, she had no reason to raise that issue in the dissolution action. With respect to the ruling on the motion for clarification, that ruling did not constitute a final judgment, and, for that reason, the plaintiff had no right to appeal. See, e.g., *Dowling* v. *Finley Associates, Inc.*, 248 Conn. 364, 373, 727 A.2d 1245 (1999) (for purposes of res judicata, *final judgment* rendered on merits is bar to subsequent action). In such circumstances, it reasonably cannot be concluded that the matter was fully and fairly litigated.[11]

I therefore would reverse the decision of the trial court to grant the defendant's motion for summary judgment and remand the case to the trial court for further proceedings. Accordingly, I respectfully dissent.

[1] Hereinafter, all references to the trial court are to the court, *Booth, J.*, unless otherwise indicated.

[2] The defendant has not challenged these assertions, and I know of no reason why they should not be credited.

[3] But cf. *Powell* v. *Infinity Ins. Co.*, 282 Conn. 594, 607, 922 A.2d 1073 (2007) (trial court properly granted defendant's motion for summary judgment on res judicata grounds when trial court found that facts underlying second action "certainly [were] known" to plaintiffs at time of first action); *Wright* v. *Zielinski*, 824 A.2d 494, 497–98 (R.I. 2003) (husband's postdissolution breach of contract claim barred by doctrine of res judicata because husband was fully aware of all facts underlying such claim at time of dissolution proceeding).

[4] The majority also asserts that "the public policy underlying the doctrine of res judicata counsels against [my] approach." Footnote 13 of the majority opinion. Once again, however, the majority's assertion is unsupported by any explanation.

[5] Indeed, the defendant's sole argument with respect to the applicability of the doctrine of res judicata is that the plaintiff's claim that the meaning of the term "personal injury cases" includes workers' compensation cases "could have been brought during the nine day [dissolution] trial." The defendant *does not* argue that the plaintiff was aware of the facts underlying her breach of contract claim at the time of the dissolution proceeding.

[6] For example, the first case on the list is *Adams* v. *Waste Management of Connecticut, Inc.*, with a status of "pending."

[7] Specifically, the plaintiff claimed that the term "of counsel" was not defined in the dissolution agreement, that the provisions of the agreement regarding the division of fees did not adequately describe whether the plaintiff was to receive her share from the net or the gross fees, and that the provision of the agreement stating that the parties had "sufficient understanding" of each other's finances was vague. With respect to the latter claim, the plaintiff argued that the language was misleading because she did not believe that the defendant had been forthcoming with respect to his actual annual income.

[8] In such cases, the trial court's determination of the meaning of the judgment, and any order issued in connection therewith, gives rise to an appealable final judgment. See, e.g., *Cifaldi* v. *Cifaldi*, 118 Conn. App. 325, 329–30, 983 A.2d 293 (2009) (appeal from trial court's denial of plaintiff's motion for contempt, seeking to compel defendant to pay certain money allegedly due under parties' dissolution agreement); *Adams* v. *Adams*, 93 Conn. App. 423, 424, 430–31, 890 A.2d 575 (2006) (appeal from trial court's denial of defendant's motion for contempt on ground that plaintiff had

violated financial terms of parties' dissolution agreement); *Cushman* v. *Cushman*, 93 Conn. App. 186, 189–90, 888 A.2d 156 (2006) (appeal from trial court's granting of motion for contempt on ground that plaintiff had violated financial terms of parties' dissolution agreement); *Behrns* v. *Behrns*, 80 Conn. App. 286, 292, 835 A.2d 68 (2003) (reversing trial court's denial of plaintiff's motion for contempt seeking order that defendant had violated financial terms of parties' dissolution agreement), cert. denied, 267 Conn. 914, 840 A.2d 1173 (2004); *Sheppard* v. *Sheppard*, 80 Conn. App. 202, 209, 216–17, 834 A.2d 730 (2003) (appeal on ground that trial court had misconstrued terms of parties' separation agreement).

The majority states that I fail "to appreciate the significant difference between filing a motion for clarification, which was permissibly done in the present case, or filing a motion for contempt, which the plaintiff certainly could have done—neither of which implicates the doctrine of res judicata—and the subsequent commencement of an entirely new action." Footnote 14 of the majority opinion. The majority fails, however, to explain what it characterizes as the "significant difference" between a motion for clarification and a motion for contempt, on the one hand, and the present action, on the other. In fact, there is no such "significant difference." In all three instances, a party seeking a judicial determination of the meaning of a disputed term in an agreement that is incorporated into a divorce decree is entitled to such a determination. Indeed, the majority cannot identify any meaningful difference at all between the litigation necessary for the purpose of resolving a motion for contempt, which, as I previously noted, gives rise to a right of appeal, and the litigation necessary for the purpose of resolving the plaintiff's claim in the present action.

[9] The majority also observes that the plaintiff had drafted the parties' dissolution agreement and revised it several times. To the extent that the majority purports to rely on this fact to support its conclusion that the plaintiff's claim is barred by the doctrine of res judicata, I fail to see how it has any bearing on the determination of whether the plaintiff's claim is foreclosed. There simply is no reason to presume that the plaintiff had any knowledge of the defendant's understanding of the meaning of the term "personal injury cases" merely because she had authored and revised the parties' dissolution agreement.

[10] In reaching this conclusion, we adopted the position set forth in the Restatement (Second) of Judgments. See *Commissioner of Motor Vehicles* v. *DeMilo & Co.*, supra, 233 Conn. 268–69, citing 1 Restatement (Second), Judgments § 28 (1), p. 273 (1982).

[11] The majority states that, although the right of appeal is a precondition to a determination that an issue has been fully and fairly litigated for purposes of the doctrine of collateral estoppel, that requirement is inapplicable to the doctrine of res judicata. See footnote 20 of the majority opinion. I disagree with this assertion insofar as it pertains to the prong of the doctrine of res judicata pursuant to which a claim cannot be relitigated if it has been actually litigated and decided. As I previously noted, only claims that have been litigated to a final judgment are subject to the preclusive effect of the doctrine of res judicata, and it is axiomatic that final judgments are appealable. Indeed, I can think of no reason why this court would conclude that an issue has been fully and fairly litigated for purposes of collateral estoppel but not for purposes of res judicata.