PALMER, J., dissenting. I disagree with the majority's conclusion that the present appeal must be dismissed because the trial court's denial of the motion for summary judgment filed by Brown and Brown, Inc.,[1] in its declaratory judgment action against the state attorney general, Richard Blumenthal,[2] is not an appealable final judgment. I therefore dissent.

Although the majority opinion contains a summary of the procedural history of the case, a somewhat more detailed recitation of that history is relevant to the determination of whether this appeal has been taken from a final judgment. The memorandum of decision of the trial court sets forth some of the relevant procedural background. "The attorney general is currently pursuing an investigation into certain business practices in the insurance industry [that] may violate the Connecticut Antitrust Act, General Statutes § 35-24 et seq. In furtherance of this investigation, the attorney general issued interrogatories and a subpoena duces tecum to Brown pursuant to [General Statutes] § 35-42. In the course of communications between Brown and the attorney general's office, it became apparent that the parties disagreed over the meaning of the provisions of § 35-42 regarding disclosure of the responsive materials and information.

"On June 2, 2006, Brown submitted to the attorney general its first stage of responsive material and information consisting of [more than] 12,000 pages of documents. Brown's second stage of responsive materials was due to the attorney general by August 31, 2006. These responsive materials have not been provided due to the disclosure disagreement between Brown and the attorney general. This disclosure disagreement extends to the responsive material and information provided in the first stage of production and to the responsive material and information to be provided in the second and any subsequent stages of production."

On August 29, 2006, Brown filed a five count complaint against the attorney general in which it sought, as to count one, "a declaration that the [a]ttorney [g]eneral may not disclose any . . . documents or information [received pursuant to § 35-42] to any person outside the [a]ttorney [g]eneral's [o]ffice except to the extent such documents or information [is] (1) actually entered into evidence on the public record in a [c]ourt proceeding after notice and opportunity for the subpoena respondent to be heard regarding whether such disclosure may be made . . . or (2) provided to an official of another state or the federal government . . . where such official will maintain the same degree of confidentiality provided by [§] 35-42 (c) and (e) . . . ." Brown also sought, as a means of enforcing its rights under

§ 35-42, an injunction (count two), a writ of mandamus (count three), an order quashing or modifying the subpoena (count four), and a protective order (count five). As the trial court explained in its memorandum of decision, these counts did not allege separate causes of action but, rather, merely set forth various alternative remedies to which Brown believed that it would have been entitled to if it had prevailed on its claim for a declaratory judgment.[3]

On August 30, 2006, the attorney general filed a separate civil action seeking an order requiring Brown to comply with the interrogatories and the subpoena duces tecum.[4] On October 5, 2006, the parties filed a joint motion to consolidate their respective actions and for the entry of a scheduling order. On October 12, 2006, the court granted the motion and ordered the parties to submit, by October 30, 2006, "motions for summary disposition of their respective [cases] . . . together with initial briefs and related papers," which the parties subsequently filed.[5] A review of the pleadings that were filed in each case clearly indicates that the parties viewed the consolidated cases as two sides of the same coin, with each party arguing that the court should adopt that party's construction of § 35-42 and reject the construction advocated by the other party. Thus, for example, in the case initiated by the attorney general, Brown concluded its memorandum of law in opposition to the attorney general's application for an order of compliance by asserting that such an order was unnecessary because it "is prepared to comply with the subpoena" should the court reject the construction of § 35-42 that it had proffered in both cases.

In a comprehensive memorandum of decision issued on May 1, 2007, the trial court denied Brown's motion for summary judgment. In so doing, the court explained that Brown's motion "presents a pure issue of law, namely, to what extent § 35-42 requires the attorney general to maintain the confidentiality of information he obtains pursuant to the statute." Consistent with the allegations of Brown's complaint, the court framed the issues raised by Brown's summary judgment motion as requiring the determination of the following: "(1) whether § 35-42 prohibits disclosure of information to 'any person outside the attorney general's office'; (2) whether a person providing information under § 35-42 is entitled to notice and an opportunity to be heard in a court proceeding regarding whether the information may be disclosed [in that proceeding]; and (3) whether the attorney general may share information obtained under § 35-42 with officials of other jurisdictions only where the officials will maintain the same degree of confidentiality required of the attorney general under the statute." The court thereafter decided each issue in favor of the attorney general and, accordingly, denied Brown's motion for summary judgment.[6] The court did not formally render judgment for the attorney general

in either of the two consolidated cases.

On May 18, 2007, Brown appealed to the Appellate Court. On June 1, 2007, the attorney general filed a motion to transfer the appeal to this court pursuant to Practice Book § 65-2,[7] which permits a party, after the filing of an appeal in the Appellate Court, to request a transfer of the appeal to this court. Pursuant to the requirements of Practice Book § 65-2, and in accordance with the provisions of Practice Book § 66-2,[8] the attorney general set forth the reasons why he believed that this court should hear the appeal directly.[9] On June 13, 2007, this court granted the attorney general's motion to transfer the appeal to this court.

This appeal was argued on February 15, 2008. At that time, this court, sua sponte, raised the issue of whether Brown had appealed from a final judgment. Counsel for both parties maintained that Brown had appealed from a final judgment because the trial court's denial of Brown's motion for summary judgment on its claim for a declaratory judgment effectively disposed of all of the issues that Brown had raised in its complaint.

In concluding that this appeal must be dismissed for lack of a final judgment, the majority relies on the fact that, "[b]ecause the [attorney general] did not file a cross motion for summary judgment . . . the trial court's interpretation of § 35-42 has not been incorporated into any judgment." The majority also asserts that "[t]he present action remains an open matter on the trial court docket, and further proceedings will occur in this case." As far as I can tell, these two conclusions provide the sole bases for the majority's determination that dismissal of the appeal is required.[10]

I agree with the majority's statement of the law governing the appealability of trial court rulings, and I see no need to repeat that law in detail in this opinion. In particular, I agree with the majority's observation that this court lacks subject matter jurisdiction to entertain an appeal that is not taken from a final judgment and that the parties to an action cannot confer jurisdiction on this court in the absence of such a judgment. I also agree that, *ordinarily*, the denial of a motion for summary judgment is an interlocutory ruling that does not constitute a final judgment for purposes of appeal; see, e.g., *Hopkins* v. *O'Connor*, 282 Conn. 821, 828, 925 A.2d 1030 (2007) ("[t]he denial of a motion for summary judgment ordinarily is an interlocutory ruling and, accordingly, is not a final judgment for purposes of appeal"); because, as a general matter, the denial of a motion for summary judgment does not effectively terminate the litigation. Indeed, the party whose motion has been denied generally retains the right to a trial on the merits.

I part company with the majority, however, insofar as it determines that the trial court's denial of Brown's

motion for summary judgment in the particular circumstances of Brown's declaratory judgment action does not constitute an appealable final judgment. The denial of Brown's motion was a final judgment because the court's ruling on that motion definitively and conclusively resolved the rights of the parties under § 35-42 for all purposes. Such a ruling meets all of the requirements of a final judgment under established final judgment jurisprudence. The mere fact that the trial court's decision has not been incorporated into a judgment does not dictate a contrary conclusion. See, e.g., *Normand Josef Enterprises, Inc.* v. *Connecticut National Bank*, 230 Conn. 486, 488 n.1, 646 A.2d 1289 (1994) (review of memorandum of decision revealed that trial court had considered and implicitly resolved claims raised in particular count of complaint, and it would "elevate form over substance" to conclude that no final judgment had been rendered in case); see also *Wesley* v. *Schaller Subaru, Inc.*, 277 Conn. 526, 529 n.1, 893 A.2d 389 (2006) (indicating that whether judgment has been rendered depends on pronouncement of court in memorandum of decision rather than clerical rendition of court's decision in judgment file); *Lucisano* v. *Lucisano*, 200 Conn. 202, 206–207, 510 A.2d 186 (1986) (same). Contrary to the analysis employed by the majority, no rule of law or procedure prevents this court from examining the decision of a trial court to determine whether it represented a final judgment for purposes of appeal. In fact, such an examination is a necessary component of any final judgment analysis. As the Appellate Court has stated, "[t]here is no steadfast or comprehensive definition of 'final judgment' that applies in all cases. Rather, *we must look to the circumstances of each case* to determine whether a final judgment exists to invoke the jurisdiction of an appellate court." (Emphasis added.) *Exel Logistics, Inc.* v. *Maryland Casualty Co.*, 40 Conn. App. 415, 418, 671 A.2d 408 (1996). Both parties have represented that there will be no further proceedings in the trial court because all of the issues raised in Brown's complaint were decided against Brown by that court when, after rejecting all of Brown's claims under § 35-42, it denied Brown's motion for summary judgment.[11] There is nothing in the allegations of Brown's complaint to suggest that the parties' representations are in any way inaccurate. Indeed, it is readily apparent that the trial court has resolved all of the issues raised in Brown's complaint, which, as the trial court observed, involve pure questions of law.[12]

Moreover, General Statutes § 52-29 (a), which applies specifically to declaratory judgment actions, expressly provides that "[t]he Superior Court in any action or proceeding may declare rights and other legal relations on request for such a declaration, whether or not further relief is or could be claimed. The declaration shall have the force of a final judgment." In addition, Practice

Book § 17-58 provides that "[t]he decision of the judicial authority [in a declaratory judgment action] shall be final between the parties to the action as to the question or issue determined, and shall be subject to review by appeal as in other causes." I see no reason why the trial court's decision in the present case, which fully and finally adjudicated the rights of the parties under § 35-42, is not a final judgment under the plain language of § 52-29 (a). Apart from the fact that the decision was made in the context of the denial of a motion for summary judgment, the majority offers no such reason.[13]

Although the majority asserts that "further [trial court] proceedings will occur in this case," the majority is unable to identify *what* such proceedings will occur, or why. The reason for the majority's inability to do so is plain: formally obtaining a judgment is the only action that the parties possibly can take in the trial court. This fact defeats the majority's contention that the trial court's ruling does not constitute a final judgment for purposes of appeal. When the act of transforming a trial court's fully dispositive ruling into a judgment is the *only* action left to be taken in the trial court, the ruling terminating the litigation on its merits itself represents a final judgment. The majority's contrary determination, which is predicated solely on the form of the attorney general's motion rather than the substance of the trial court's ruling, injects unnecessary and unwarranted rigidity into our final judgment jurisprudence.

The majority's conclusion is predicated on its misapprehension that the decision from which the present appeal was taken is interlocutory in nature. Interlocutory is defined as "not final or definitive"; Webster's Third New International Dictionary; and "not constituting a final resolution of the whole controversy." Black's Law Dictionary (8th Ed. 2004). As the parties correctly maintain, the trial court's ruling denying Brown's motion for summary judgment was final and definitive because it did indeed "constitut[e] a final resolution of the whole controversy." Id. Thus, contrary to the majority's assertion that this case must be analyzed under the two-pronged test set forth in *State* v. *Curcio*, 191 Conn. 27, 463 A.2d 566 (1983), that test clearly is inapplicable because it pertains only to interlocutory rulings, that is, rulings that do *not* fully and finally resolve the rights of the parties. As I have explained, the ruling at issue in the present case is not interlocutory in any sense of the term because it *does* fully and finally resolve the parties' rights.[14]

I also reject the majority's assertion that entertaining the merits of the present appeal will "open the floodgates to appeals brought from interlocutory orders." Footnote 6 of the majority opinion. This fear is unfounded because interlocutory orders—that is, orders that do not finally dispose of the entire case—are not

appealable under the application of the final judgment rule that I advocate. Put differently, permitting an appeal from a trial court order or ruling that finally resolves all of the parties' claims cannot possibly result in a flood of interlocutory appeals because such an order or ruling simply is not interlocutory.

The dismissal of this appeal presumably will result in the parties' return to the trial court so that that court can render judgment in favor of the attorney general. Brown then will be required to perfect a second appeal, which undoubtedly will be identical to the present appeal. Mandating such a result elevates form over substance in a manner that does absolutely nothing to advance the policy concerns underlying the final judgment rule, namely, "to discourage piecemeal appeals and to facilitate the speedy and orderly disposition of cases at the trial court level"; (internal quotation marks omitted) *Mazurek* v. *Great American Ins. Co.*, 284 Conn. 16, 33, 930 A.2d 682 (2007); because those considerations clearly have been met in the present case. Dismissing the present appeal also will delay the resolution of the important issues raised by Brown's claims, impair the ability of the attorney general to proceed expeditiously with his antitrust investigation and result in the needless expenditure of the parties' and this court's time and resources.

Because the trial court's ruling on Brown's motion for summary judgment constitutes a final judgment, this court has jurisdiction over this appeal. I therefore would proceed to address the merits of the parties' claims. Accordingly, I respectfully dissent.

[1] Brown and Brown, Inc., and Richard Blumenthal, in his official capacity as the state attorney general, are parties to two consolidated cases that are the subject of this appeal. Brown and Brown, Inc., is the plaintiff in its declaratory judgment action and the defendant in another action brought by Blumenthal. See footnote 4 of this opinion and accompanying text.

For ease of reference, I refer to Brown and Brown, Inc., as Brown throughout this opinion.

[2] For ease of reference, I refer to Blumenthal as the attorney general throughout this opinion.

[3] Specifically, the court stated: "In the alternative, [Brown] requests either an injunction, a writ of mandamus or a protective order. With regard to each form of relief requested, however, the practical relief [that Brown] seeks is to have the court place the same . . . limitations on the attorney general's use of information obtained under § 35-42. Accordingly, for purposes of the motion for summary judgment, the issues are identical regardless of which form of relief is considered." An examination of Brown's complaint reveals that the court's interpretation of the complaint is fully consistent with Brown's essential claim, contained in the count seeking declaratory relief, that § 35-42 limits the attorney general's authority to disclose documents and information obtained pursuant to that statutory provision.

[4] That action is entitled *Blumenthal* v. *Brown & Brown, Inc.*, Superior Court, judicial district of Hartford, Docket No. CV-06-4025257-S. The action that Brown brought against the attorney general is entitled *Brown & Brown, Inc.* v. *Blumenthal*, Superior Court, judicial district of Hartford, Docket No. CV-06-4025215-S.

[5] The attorney general did not label the twenty-two page pleading that he filed on October 30, 2006, as a "motion for summary judgment" but, rather, a "memorandum of law in support of [the] application for an order of compliance."

[6] The trial court summarized its conclusions as follows: "[T]he declaration

that [Brown] seeks in the present case is not in accordance with the law in the following respects: (1) § 35-42 (c) and (e) do not create an absolute bar to disclosure of information during an investigation by the attorney general; (2) § 35-42 does not provide for a right of notice and an opportunity to be heard before information obtained under its provisions is used in evidence during court proceedings to which the person who provided the information is not a party; and (3) § 35-42 does not require officials of other jurisdictions who receive information pursuant to subsection (g) to conform to the public nondisclosure provisions of subsections (c) and (e)."

[7] Practice Book § 65-2 provides in relevant part: "After the filing of an appeal in the appellate court, but in no event after the case has been assigned for hearing, any party may move for transfer to the supreme court. The motion, addressed to the supreme court, shall specify, in accordance with provisions of Section 66-2, the reasons why the party believes that the supreme court should hear the appeal directly. A copy of the memorandum of decision of the trial court, if any, shall be attached to the motion. The filing of a motion for transfer shall not stay proceedings in the appellate court. . . ."

[8] Practice Book § 66-2 provides in relevant part: "(a) Motions, petitions and applications shall be specific. No motion, petition or application will be considered unless it clearly sets forth in separate paragraphs appropriately captioned: (1) a brief history of the case; (2) the specific facts upon which the moving party relies; and (3) the legal grounds upon which the moving party relies. A separate memorandum of law may but need not be filed. If the moving party intends to file a memorandum of law in support of the motion, petition or application, however, such memorandum shall be filed with the motion, petition or application. . . ."

[9] In support of his motion to transfer, the attorney general asserted, inter alia, that "this appeal raises important issues of first impression that directly impact the attorney general's statutory enforcement powers under the Connecticut Antitrust Act." The attorney general further maintained that, because the appeal involves a pure issue of statutory interpretation, the court's disposition of the appeal likely would have implications beyond this particular case.

[10] The majority also refers to the law of the case doctrine. Although the relevance of that doctrine to the appealability of the trial court's decision is not clear to me, it does not appear that the majority relies on the doctrine as an independent ground for its conclusion that dismissal of Brown's appeal is required.

[11] These representations are consistent with the observation of the trial court that counts two through five of Brown's complaint merely sought the relief that, according to Brown, would have been appropriate if it had prevailed on its claim for declaratory relief, which it sought in connection with the first count of its complaint.

[12] Thus, this is not a case in which the parties are seeking to manipulate the final judgment rule to their advantage by attempting to confer jurisdiction on this court when none exists. The fact is that the case has been finally decided in the trial court, and there are no further proceedings in that court that will affect the parties' rights.

[13] Although it would have been preferable for the attorney general to have filed a cross motion for summary judgment so that the trial court formally could have rendered judgment for the attorney general when it denied Brown's motion for summary judgment, the failure of the attorney general to do so is not, as the majority holds, determinative of whether the present appeal has been taken from a final judgment. It is clear, moreover, that the trial court and the parties treated the attorney general's application for an order of compliance and the memorandum of law filed in support thereof in the consolidated case as effectively seeking the same result. See footnote 5 of this opinion.

[14] The majority asserts that its conclusion concerning the interlocutory nature of the trial court's denial of Brown's motion for summary judgment is supported by "consistent case law . . . ." The majority, however, does not cite to any such case law. In fact, as I noted previously, under our final judgment jurisprudence, the denial of a motion for summary judgment *ordinarily* is not a final judgment for purposes of appeal. E.g., *Hopkins* v. *O'Connor*, supra, 282 Conn. 828. For the reasons set forth previously, this case presents an exception to that general rule.